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The American Citizen's Manual, Part II. The Functions of Government: considered with special reference to taxation and expenditure, the regulation of commerce and industry, provision for the poor and the insane, etc., the management of the public lands, etc., etc., etc. Edited by WORTHINGTON C. FORD.

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QUESTIONS OF THE DAY.—V.

THE

American Citizen's Manual

PART I

GOVERNMENTS (NATIONAL, STATE, AND LOCAL)

THE ELECTORATE

THE CIVIL SERVICE

EDITED BY

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INTRODUCTORY NOTE.

What is the relation of the citizen of the United States to the governments under which he lives? This question, which is quite distinct from questions concerning his relations to his fellow-citizens, is continually recurring as the population of the country increases, the interests of the people become more complex, and the interference of government with the rights and privileges of the citizen becomes more general. And it is a problem which, from its nature, is hardly capable of a satisfactory solution; for the conditions are in a state of perpetual change. No sooner are present wants and needs provided for, than new questions arise, demanding attention. This matter of the relation of the governed to the government, is, then, pre-eminently and continually a "question of the day."

But before attempting to show to what extent the powers of government have been exercised in the United States, some knowledge of the machinery of government, its organization and manner of act-

ing, is necessary; and it is, further, important to have clearly set forth the methods of choosing the agents of State action, and the more important points regarding official responsibility and the civil service, for these subjects are more closely connected with the organization than with the functions of government.

Of the difficulties which presented themselves to the editor some idea may be gained from the fact that the organizations of no two State governments are exactly alike; and the editor has therefore confined himself to dealing with only the more essential branches of the subject, taking from the great variety of illustrations offered such as seemed best suited for his purpose. For the convenience of those who may desire to make a more complete examination of the subjects treated of in this volume, a short list of works is added which will be found valuable for reference.

BROOKLYN, NEW YORK,
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American Citizen's Manual

CHAPTER I.

GOVERNMENT AND ITS FUNCTIONS.

There can be framed no exact definition of government, nor can its functions be so limited and defined as to include and satisfy all conditions that may arise. Government is, in its form and sphere of action, as varied as are the customs and conditions of the people over which it is instituted, nor is it the same among any one people at different periods of its history. In its widest sense, however, government is the ruling power in a state or political society; and with regard to its functions, it may be practically described as the organization of the community for such objects as are best obtained by common action. And while the proper sphere of governmental action is as varied and as much a matter of dispute as is its form; yet the primary object of government is to protect life and property, and to insure to its subjects this protection by a proper definition and enforcement of their rights.

All the various forms of government which are met with may be reduced to three classes, and this distinction into classes depends upon the numerical

relation between the constituent members of the government and the population of the state. A monarchy is government by one man; an aristocracy, by a number of men small in proportion to the whole number of the population; and a democracy, by a number of men large in proportion to the population, or by a majority of the subjects of the state. These three principal forms may be combined, and a large number of mixed forms result; but these mixed forms may all be ranged under one of the three great divisions or classes—monarchy, aristocracy, and democracy,—according to the predominating feature.

Government in the United States.

The government of the United States is democratic in its form; that is, the decision of all matters pertaining to the welfare of the State rests with a majority of the people. But the number of the population is so great, the extent of territory so vast, and the interests at stake so varied and important, that the purely democratic form, in which what concerns all is decided by all, is not practicable; and the actual performance of governmental duties is delegated to a number of officers elected by the rest. And through this method of representation a democracy may exist, although apparently falling under the definition just given of an aristocracy, for the number of the representative bodies, which are the

government, is small in comparison with the number of the governed. But the power does not rest ultimately in these bodies; they are clothed with certain functions by the people, who may at pleasure take them away or modify them, for the people alone are the real rulers.

In addition to this division of labor, by which the powers of government are entrusted to a few, a further saving of labor and an increase of efficiency are secured by a division of the functions of government, according to the size and extent of territory to be governed. It is sometimes said that a citizen of one of the United States is under four governments, national, State, county, and municipal. But when the powers or functions of each of these apparently distinct governments are examined, it is seen that there are but two, national and State. And a further examination will show that these are not separate and distinct governments, but are rather supplementary to one another, each having a sphere of action peculiar to itself. "The Federal and State governments," says the Federalist, "are in fact but different agents and trustees of the people, constituted with different powers and designated for different purposes."

From this dual character of the government it might naturally be supposed that contests would arise as to where the power of the Federal government ends and the State government begins. So

far as was possible this difficulty was obviated by defining the powers of the Federal government in a written instrument, the Constitution, under which the government was formed. And in order to form or constitute the national government such powers as were considered necessary to preserve it and give it effect were originally ceded to it by the people of the States. In general that government was formed for national purposes only, and its functions and powers to effect those purposes are sharply defined by the Constitution. To form a more perfect union, to establish justice, to insure domestic tranquillity, to provide for the common defence, and to promote the general welfare, are all national objects and affect equally the inhabitants of each State. To carry out these objects certain powers, few in number, but adequate in their nature to effect these and other national purposes, are granted to the national government. These powers are, moreover, limited by the Constitution, and extend no further than is granted by that document; and whatever powers are not so ceded, either expressly or by implication, are reserved by the people or have been delegated to the State governments. In all matters of which the national government has cognizance it is supreme, and overrides any State constitution or law that may conflict with its powers. And this is also true in such cases as taxation, in which national and State governments possess concurrent

powers,—the former always taking precedence. This was essential to the existence of the central government, as it effectually prevents any curtailing of its powers through hostile State legislation. At the same time protection against encroachment by the Federal government upon the powers of State is provided by the limitations imposed by the Constitution; although, it must be confessed, the protection is not so effectual as always to prevent such encroachment.

As all power is, in theory, ultimately inherent in the people, the State government is a creature of the people, and being of limited powers, its sphere of action is also restricted and defined by a written constitution. These constitutions are framed by a body of men elected by the people for this special purpose, and resembling in all respects a legislative body, save that its action is confined to this immediate matter, and when it has accomplished this, its powers end.[1] By these constitutions State government is instituted to secure to the people certain inalienable rights, among which are those of life, liberty, and the pursuit of happiness. These are also objects of the national government. But as the latter is instituted for national purposes only, so the State government exists for State purposes only, and consequently its powers are limited to that extent of territory which is comprised in the State. The central government is one of general and delegated

[1] See Jameson, "The Constitutional Convention."

powers, while the State governments have all local and undelegated powers. Hence, if it is desired to know what power the central government has, the Federal Constitution must be looked into, for it has no other than what is there delegated; but if it is desired to know what power belongs to the State government, not only must the Federal Constitution be examined, for whatever powers are not prohibited either by express language or necessary implication, belong either to the State government or the people, but also the State constitution, to see if the people have conferred upon it the power in question.[1]

In order to make the State government more effective by not burdening it with details that are strictly local in their character, the territory of the State is divided into a number of divisions called counties, and these counties into townships, and over each of these divisions is placed a local government clothed with sufficient powers to enable it to regulate and control such matters as by their local

[1] A constitution should be elastic and capable of amendment, so that it may be adapted to changed circumstances. The Federal Constitution is subject to amendment on the vote of two thirds of both Houses of Congress, or on the application of the Legislatures of two thirds of the several States; and such amendments, when framed in convention, must be ratified or accepted by three fourths of the States in whatever manner is proposed by Congress. With regard to amendments to State constitutions. the amendment is usually prepared and passed upon by the Legislature, and is then accepted or rejected by a vote of the people. In New York State such amendments must pass two successive Legislatures before it can be submitted to the people, the object being to prevent too frequent alterations in the organic law of the State. In the same State the question of revising the constitution must be submitted to the people every twenty years, and a convention for that purpose is then called. In other States the Legislature may take the initiative and call a convention for revision.

character belong to it. Hence arise county and municipal governments, commonly called local governments, which are, however, but branches of the State government, being created by it, and exercising powers under its supervision and control. So that a citizen of this country is apparently under four governments—municipal or town, county, State, and national,—but as each is occupied with a different sphere of action, over different extents of territory and particular classes of needs, they in reality constitute but one complete government, under which all duties and functions are cared for and performed.

But this power is not so absolute as might be imagined. For as all power lies in the people, and as the governments are created for special objects and derive all their powers from the consent of the governed, to the people belong the right of altering or abolishing any government that does not attain the objects for which it was framed, and of instituting instead such a new form of government as seems to them fitting. This does not, however, imply that a State has a right to withdraw from the confederacy, because it or its people believe the action of the national government to be hostile to the interests of the State. It has been determined, and it is now a recognized principle, that in case any conflict of opinion arises between the national and a State government, the will of the individual State is to be subordinated to the higher interests of the confed-

eracy as a whole. By an amendment to the Federal constitution the State governments might be wiped out of existence[1]; and in like manner the State governments might abolish all local governments. But such changes are hardly possible, because the dislike of centralization, or of placing all the power in one government, whether it be State or national, is too strong, and would check any such revolutionary designs.

Branches of Government.

The functions of government may be divided into three great divisions: the making of laws, or legislative; their impartial interpretation, or judicial; and their faithful execution, or executive. And in accordance with this division of powers there are three departments of government—the legislative, the judicial, and the executive,—which are generally distinct and co-ordinate departments; and the more sharply is the line drawn in the functions proper to each department, the greater will be its independence, and the higher will be the efficiency of the government. These three branches of government are distinctly recognized, and the separation of their functions is expressly provided for both in the

[1] At the close of the war many of the Southern States were without any form of government save that of military rule. By the Constitution the United States shall guarantee to every State in the Union a republican form of government; by which is meant a government in which laws are enacted by the representatives of the people and not by the people themselves. See citations in McCrary, "Law of Elections," § 152.

national and State constitutions. And the State constitutions forbid a person belonging to or constituting one of these departments, to belong to or exercise any of the powers belonging to either of the others, except under certain conditions, when such a course is desirable or necessary. Yet, as will be shown, these departments are not wholly independent of one another, but each one may serve as a check upon the actions of either or both of the others. And not only are they checks upon one another, but one of these departments does, at times, exercise functions which more properly belongs to one of the other departments. Thus, the appointment of officers is properly an executive function; yet the Senate, a branch of the Legislature, must be consulted in many of such appointments, and to that extent exercises an executive function. Again, the Senate, when trying an impeachment, is performing a duty which is of a judicial character; and when passing upon contested elections of its members, Congress is exercising a judicial function. Formerly some of the State Legislatures granted divorces, a power which they exercised concurrently with the courts. The exercise of the veto power by the Executive is more of a legislative than an executive act, and in giving his approval to laws the Executive becomes, in reality, a part of the Legislature. Still, generally speaking, the executive, Legislature, and judiciary, are distinct and co-ordinate branches of government.

The Legislative Function.

Chancellor Kent says that the power of making laws is the supreme power in a State, and experience has shown that it is the branch of government which is most apt to enlarge its own sphere of action by encroaching upon the functions of the executive and judicial branches and by assuming powers which properly belong to these latter branches. The most important duty or function of the Legislature is to discuss questions of public policy and to frame such measures as are necessary to further public welfare. While it is a law-making body, it is also a body for deliberation. Any question that is brought before such a body should be decided upon its merits only, and a complete and thorough presentation and discussion of its various aspects, its probable causes and effects, are necessary to secure the proper remedial measures. Freedom of debate is therefore a requisite to the proceedings of the legislative body. Discussion of measures is secured, first, by the organization of the Legislature; and, secondly, by the rules which govern its proceedings.

Organization. By the Constitution all legislative powers are vested in a Congress of the United States, which shall consist of two branches, a Senate and a House of Representatives. In like manner the legislative power of the governments of the different States is vested in an Assembly, which also consists of two branches, known under different

names. In all the States the upper or smaller House is known as the Senate, and the lower body generally as the House of Representatives. But in Maryland, Virginia, and West Virginia the lower House is called the House of Delegates, and in a few States the Assembly. The two bodies are very generally known as the Legislature.[1] The concurrence of the two Houses is necessary to the enactment of laws.

The division of the Legislature into two branches is to insure against hasty and ill-advised legislation. Naturally, when a measure is thoroughly discussed in two bodies, there will be less liability to such error, and this liability will be further lessened the greater is the difference in the constitution of the two bodies, either with respect to their numbers, the mode of election, or the term of service. These differences are very marked in the national Legislature. The Senate is not only the smaller body of the two, but its members are not chosen directly by the people, but by an intermediate body, the State Legislature; and the term of service is long when compared to that of a member of the House of Representatives. The qualifications required of a Senator are of a higher degree than those of a Representative, but in both instances he must be an inhabitant

[1] "As a collective title (in 1881), therefore, General Assembly is used in twenty-three States; Legislature, by twelve States; General Court, by two States; and Legislative Assembly, by one State; but in all the States, Legislature is very often used as equivalent to the official title."

of the State from which he is chosen. The differences may be illustrated by a table:

	Age.	Citizenship.	Term of service.	How chosen.
Senate,	30	9	6	By the State Legislature.
House,	25	7	2	By popular vote.

—In either case they must be residents of the State for which they are chosen.

There is, further, a difference in the organization of the two Houses which materially modifies their relations to the people: the Senate being rather a body representing the States, while the House of Representatives represents the people of the States.

The Senate is composed of two Senators from each State, and these Senators are chosen by the State Legislatures. The representation is then equal, each State having two Senators and each Senator having one vote; and no difference is made among the States on account of size, population, or wealth. The Senate is not, strictly speaking, a popular body, and the higher qualifications demanded of its members, and the longer period of service, make it the more important body of the two. The Senate is presumedly more conservative in its action, and acts as a safeguard against the precipitate and changing legislation that is more characteristic of the House of Representatives, which, being chosen directly by the people, and at frequent intervals, is more easily affected by and reflects the prevailing temper of the

times. The Senate is more intimately connected with the Executive than is the lower body. The President must submit to the Senate for its approval the treaties he has contracted with foreign powers; he must ask the advice and consent of the Senate in the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments have not been otherwise provided for. Until 1867 the Senate could assent only to the appointment to office; the removal of an officer depended wholly upon the President, the Senate not being consulted; and this power was subject to grave abuse whenever the Executive changed from one party to another. In 1867 the Tenure of Office Act was passed, and provided that while Congress was not in session, the President might *suspend* any official, but if the Senate on meeting did not concur in such suspension, the officer should resume his place. This practically rendered the consent of the Senate necessary to a removal, because by refusing to assent to a new nomination, the suspended officer would remain in office, as a suspension is not equivalent to a removal. The Senate has sole power to try all impeachments, but it cannot originate proceedings of impeachment.

The manner of choosing Senators was regulated and made uniform by an act of Congress passed in 1866. Before that time in some States they were

chosen *viva voce*, in others by ballots, in some by a separate vote in each House, in others by both Houses meeting and voting as one body. Under the act they are to be nominated in each House by a *viva voce* vote, and if not decided upon in this way, the two Houses meet and vote together until some choice is made.

In case a vacancy occurs when the State Legislature is not in session, the governor may make a temporary appointment; but at the next meeting of the Legislature the vacancy must be filled in the usual way.

The presiding officer of the Senate is the Vice-President of the United States. He is elected in the same manner as the President, for were he chosen from the Senate itself, the equality of representation would be broken. He has no vote save when the Senate is equally divided, and his powers are very limited.

The House of Representatives is elected directly by the people, and is organized on a very different basis than that on which the Senate rests. The number of Representatives that each State is entitled to, depends upon its population. The number of Representatives was originally fixed at 65, which were apportioned among the States in the ratio of one Representative for every 30,000 population, though a State was entitled to at least one Representative even if its population did not amount to 30,000.

At the same time it was provided that this ratio should be altered at the end of every ten years, when a new census of the population should be taken. The last apportionment was made in 1882, and was based on the results of the census of 1880.

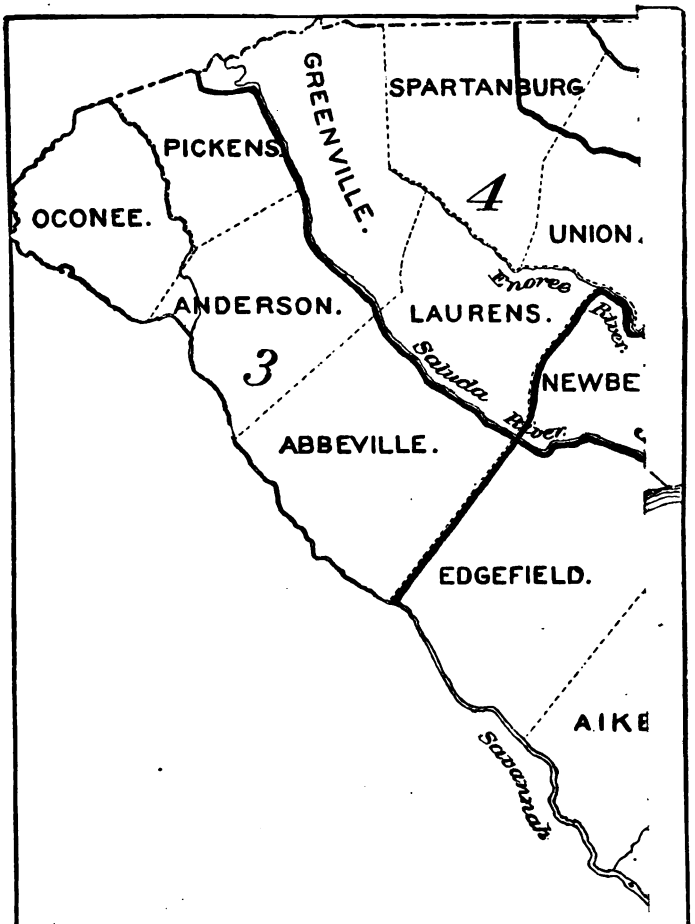
In the first apportionments it was the rule to first determine the number of inhabitants entitled to a Representative, and then by dividing the population of each State by this number, arrive at the number of Representatives the State was entitled to. But of late Congress determines the number of members the House shall contain, and then apportions them among the States in proportion to the respective populations. The following table will show how this branch of the Legislature has increased.

Year.	No. of Representatives.	Being one for every
1792	106	33,000 inhabitants.
1802	141	33,000 "
1811	181	35,000 "
1822	210	40,000 "
1832	240	47,700 "
1842	240	70,680 "
1853	233	94,000 "
1862	241	128,215 "
1872[1]	292	135,293 "

Two methods have been adopted for the election of Representatives, the one called the general ticket sys-

[1] Between 1872 and 1882 Colorado became entitled to one Representative, making the total number 293.

tem, the other the district system. In the former the qualified voters of the State were allowed to vote for every Representative to which the State was entitled. Each Representative was thus elected by the whole State. In the latter method the State was divided into a number of districts, and each district voted only for its immediate Representative. By an act of Congress of 1842, to create uniformity on this subject and to afford a more equal representation of the inhabitants of each State, it was prescribed that the Representatives in each State should be elected by the voters in districts composed of contiguous territory and equal in number to the number of Representatives the State is entitled to; each district to contain, as nearly as possible, the same number of inhabitants, and no district to elect more than one Representative. This necessitates a redistricting of the State with every change in the number of Representatives assigned to it, and has been subject to abuse from party motives in more than one instance. Thus the noted "shoe-string" district in Mississippi is five hundred miles long and about forty miles broad; it contains no considerable town save Vicksburg, and is almost wholly rural. Another instance is the "dumb-bell" district in Pennsylvania, which resembles the shape of that object. A very recent instance of such a curious division of the State for political purposes has arisen under the apportionment of Representatives of 1882 in the



MAP

OF THE

STATE OF SOUTH CAROLINA,

SHOWING THE

CONGRESSIONAL DISTRICTS.

1882.

State of South Carolina. Thus, the manner of forming the seventh district, as shown on the accompanying diagram, proves how elastic the provision that districts must be composed of contiguous territory may be. The special peculiarity of this district, apart from its remarkable general outline, lies in the fact that the narrow strip connecting the two parts is completely covered at high water, and the "land" is contiguous only at low water. Nor is the first district any the less remarkable, as it is intended to include the narrow strip of territory running between the two parts of the seventh district.[1] In these instances the curious shapes were laid out for political reasons, so as to assure the return of a Representative belonging to one of the political parties. The actual redistricting of the State is left to the Legislature of the State. Congress merely designates the number of Representatives a State is entitled to, and thus determines the number of districts the State shall contain; but it leaves the actual division to the State.

In case a State becomes entitled to an additional Representative, and the Assembly fails to redistrict the State, the new member is voted for on a general ticket by the voters of the whole State, and he is known as a "Congressman-at-Large."

[1] This example is mentioned as an aggravated instance of the means employed by parties to gain their end; and although it happens to be one which was done by the Democratic party, yet instances almost equally arbitrary may be attributed to the Republican party.

Should a vacancy occur, the governor, by proclamation, orders a special election to be held in the district where the vacancy has occurred, but the member so elected serves only for the unexpired term of his predecessor.

A territory having a regularly organized territorial government, that is, having a governor, judges, and certain other officers appointed by the President, is entitled to send one delegate to the House of Representatives. Such a delegate, however, has but limited rights, and although he may take part in the debates, he has no vote. The District of Columbia, although it was constituted a territory and received a territorial government in 1871, cannot send a delegate to Congress.

The House of Representatives has the sole power to institute proceedings of impeachment against officers of government. But its powers end with preparing the articles of impeachment, and the actual trial is held by the Senate.

The presiding officer of the House is the Speaker, and is chosen from among the Representatives. He is not, like the Vice-President, without important powers, for he appoints the various committees of the House, in which most of the bills to be acted upon by the House are prepared. This patronage, or power of appointing, makes the speakership sought after, and, like all such offices, it is often filled subject to "bargains," "trading," and other devices

among the candidates to secure a majority of the votes.[1]

Each House is very properly made the sole judge of the election returns and qualifications of its members, for there is no other branch of the government to which this power could safely be trusted. With every Congress there arises a contest between the rival candidates over a seat in the House, each claiming to have been elected by a majority of legal votes. In such cases it is the duty of the House to examine into the returns, and, in accordance with the results of such examination, declare which contestant is entitled to the seat. When the two political parties in the House are evenly balanced, party spirit plays an important part in such contests, and it is no infrequent event, under such conditions, for a contested seat to be given to one whose only recommendation is that he is of the same politics with the dominant party in the Houses, and without any regard to the legal aspects of the case.

Each House also determines the rules of its proceedings, and punishes or expels its members, but in the case of expulsion, a two-third vote is required. Each must keep a journal of its proceedings, and publish whatever parts do not require

[1] When the rule giving the appointment of committees to the Speaker was first adopted in 1789, it provided that when the committee consisted of more than three members, they were to be elected by ballot. This rule has, however, been long inoperative, and not one of the forty-three Standing Committees of the House contains so few as three members. The member first named on any committee is the chairman. The general duties of each committee are given in the Rules of the House of Representatives.

secrecy; the proceedings in "executive session" of the Senate are always secret, although the secrecy may be removed by a subsequent vote of the house. On the demand of one fifth of the members present the yeas and nays may be called and are entered in the journal. The importance of this provision can hardly be overestimated. It shows to his constituents what the member is doing, and how he votes on a particular measure. So far as it serves this purpose this publicity is a salutary check on the member, for he may be called to account for his vote by those whose interests he represents. Still in some cases a demand for the yeas and nays is resorted to by those who are opposing a measure, and make the call for the purpose of delaying action.

The members of Congress enjoy certain important privileges which serve to protect and secure independence in their judgment and action. In order that the transaction of business may not be interrupted, the members are exempt from arrest while attending at the sessions of their respective Houses, or while going to or returning from the same, except for treason, felony, and breach of the peace (which has been construed to include all criminal offences, so that the exemption from arrest extends only to civil matters). And in order to secure perfect freedom of debate the members shall not be questioned in other places for any speech or debate made in either House; but this applies only to what was

spoken in debate, and if a member causes a libellous speech to be published, he may be held answerable. For its own protection Congress has also power to punish for contempt, when committed by one who is not a member of either House, and what constitutes contempt is not defined, but is left to the judgment and discretion of the House under the circumstances of each case. The power to punish extends, however, only to imprisonment, and this is terminated by the adjournment or dissolution of Congress.

Congress must meet at least once a year; and neither House can, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting. An adjournment of Congress has the effect of terminating all the business which is before it; but if any important and essential measure remains unacted upon, or if, during a recess of Congress, there should occur an emergency requiring legislative action, the President may by proclamation call an extra session of either body, or of both Houses.

Of the legislative powers of Congress nothing need be said in this place, for it will be fully treated of in the second part of this compilation. Suffice it to say that in all matters of legislation the two Houses are an entire and perfect check upon one another. The only right which the House in its legislative capacity enjoys, and which is not equally

shared by the Senate, is that of originating all bills for raising revenue; and even these bills are subject to revision by the Senate.

Fulness of debate is further secured by the rules which govern the procedure of either House. Thus all bills[1] are required to be read three times in each House, and these readings must be on three different days, unless in urgent cases the House dispense with the rule. The first reading is for information only, and if there be made any opposition, the question is upon the rejection of the bill. If not opposed or rejected it is read for a second time, and the question is then upon its commitment or engrossment. If committed, it is either to a standing or select committee consisting of a few, or to a general committee

[1] A bill is an act in its incipient stage. All bills, save revenue bills, may originate indifferently in either House, and they are usually referred to one of the committees, which reports them back to the House, there to be acted upon. The report of the committee has usually great weight in determining the fate of a measure. As these committees play an important part in legislation, a further description of them will not be out of place. After the second reading a bill is usually referred to its proper committee, and among this small body of members the examination of the measure is made more easily and with greater dispatch than if the whole House should attempt it. The committee reports to the House, and both the bill and report are then considered in the full House. Almost all measures have to pass in this way through committees. A private claim, when referred to a committee in the usual way, is given into the charge of one or more of the members of the committee, as a sub-committee, who then proceed to examine and report upon it. Except upon important measures the House accepts the report of the committee without question.

The House may, by a vote of a majority of its members, resolve itself into a Committee of the Whole House on the state of the Union. In such cases the Speaker leaves the chair, after appointing a chairman to preside in committee. On motion the committee may rise, when the Speaker resumes the chair, and the chairman reports to the House the results of the committee session. When no determination is reached the chairman reports that the committee has had under consideration such a bill, "and has come to no resolution thereon." This committee is an important one, because every motion for a tax or charge upon the people must be first discussed by it.

of the whole House. After discussion in committee the bill is reported back to the House, with or without amendments, and it may be further amended in the House. When a bill is sufficiently matured, the question is upon its engrossment for a third reading; and the bill is again open to debate, but may not be amended. If it passes its third reading in both Houses, and receives the assent of the President, it becomes an act. But at almost every stage of this proceding the bill may be suppressed should a majority so desire. In case of disagreements between Senate and House on a bill, some settlement is attempted by committees of conference in which both Houses are represented. "Incidentally it may be remarked that conference committees have had of late an important influence on legislation. They are small, secret, and homogeneous bodies, and appointed rather than elected. The differences between the Houses are often more apparent than real, and are intended to befog the public. It has become the common remark, 'We will make a record in the two Houses, and then fix it up in conference.'" [1]

It has sometimes been complained that the opportunities for debate are such as to be exposed to abuse, for a minority can block the progress of legislation by merely talking against time.[2] It is doubt-

[1] *N. Y. Evening Post*, Aug. 1, 1882.

[2] In the House all debate may be shut off by moving the "previous question," and nothing can then be done until the previous question has been decided. In the Senate debate can be stopped only by agreement.

ful if any limitations other than those now in existence could be imposed without leaning too far in the other direction and thus leading to hastily considered and insufficient legislation. The tendency to talk has been increased by the great facilities of communication of the present day, by which the reports of the proceedings of such bodies are carried over the country, and through the medium of the press reach the furthermost limits of the land. A member is led to believe that he cannot better show his active interest in the welfare of his State, or prove to his constituents his zeal in their behalf, than by making a speech which is duly printed and circulated over the country, thus keeping him before the people. At one time it was thought that the mere printing of a speech was enough, and speeches that had never been delivered were printed in the official record of the proceedings of Congress; but so great did the scandal become that the privilege was done away with, and the consent of the House is now necessary to the insertion of any speech or even statistical table that is not actually read on the floor of the House during debate. Very recently a long speech in the form of a poem was thus inserted.

The bills before Congress are either public or private measures. The former concern the whole country, while the latter deal with a district, a locality, or an individual. The number of private bills and claims that annually come before Congress is

enormous, and it has become a serious question how this pressure may be relieved. As illustrating the amount of business before each Congress for the last twenty years, but a very small part of which has ever been attended to, and the bulk of which is private bills, the following table may be given.

A statement of bills and joint resolutions introduced in each Congress from 1861 *to* 1881, *inclusive.*

Congress.	Senate bills.	Senate resolutions.	House bills.	House resolutions.
Thirty-seventh, 1861–'63	433	137	613	158
Thirty-eighth, 1863–'65	485	128	813	182
Thirty-ninth, 1865–'67	635	184	1,234	305
Fortieth, 1867–'69	980	244	2,023	476
Forty-first, 1869–'71	1,375	326	3,091	522
Forty-second, 1871–'73	1,652	15	4,073	592
Forty-third, 1873–'75	1,362	20	4,891	162
Forty-fourth, 1875–'77	1,293	33	4,708	196
Forty-fifth, 1877–'79	1,865	72	6,549	250
Forty-sixth, 1879–'81	2,224	167	7,257	419
	12,304	1,326	35,252	3,264
		12,304	3,264	
Total		13,630	38,516	
			13,630	
Grand total			52,146	

When the State Legislatures are treated of, it will be seen that steps have been taken to check this

growing evil by provisions or amendments to the State constitutions.

The checks on legislation do not consist alone in such as are laid down by the rules governing the procedure of Congress. The President has the veto power, which is not to overthrow or even obstruct legislation, but which merely forces a reconsideration by Congress of the vetoed measure; and the Supreme Court may destroy the force of a law by declaring its provisions to be contrary to the Constitution.

Such, then, is the organization of the national legislature, and its manner of acting.

The State Legislature.

The State Legislatures are not organized on one uniform plan, but differ among themselves in the manner of apportioning Representatives among their respective populations, in the qualifications required of the members, and in the powers and duties of these bodies. These differences are, however, mere matters of detail, and will not alter in any important particular the general plan of organization that will here be given.

The most essential difference between the national and State Legislatures, apart from their different spheres of action, lies in the representation. In the national Legislature we have seen that the Senate

represents the States, and the House of Representatives the people; the members of the one owing their election to the State Legislature, those of the other to the people. In the two branches of the State Legislature no such distinction exists; nor could any such be made, because when the State governments were formed there were no two such clashing interests as were represented by the State and central governments, and which played so important a part in the formation of the Federal Constitution and in the organization of the government to be exercised under it. It was desirable to make the two branches unlike, but from the circumstances of the case there could not be the same degree of dissimilarity as was adopted in the constitution of Congress. Deriving all its powers from the people of the State, and, moreover, concerned with matters which pertain to the interests of the State, the members of both houses are elected directly by the people.

As far as is possible the two Houses are organized on different principles. Thus, the Senate is the smaller body of the two; its members are elected for a longer term of service, and are chosen from larger districts; and it thus possesses more stability and permanence, and less of local prejudice and local interests. The members of the lower House, representing smaller districts and subject to frequent change, come more directly from the people, and are quicker to reflect public opinion.

For political purposes the State is divided into a number of Senatorial and Assembly districts, the number of each class of districts bearing some relation to the number of members in either House to be chosen. Thus a Senatorial district may coincide with the boundaries of the counties of the State, and each district may be entitled to send one or more Senators to the State Senate. Or the State may be so divided as to give to each division or district, as nearly as may be, an equal number of inhabitants, or even of voters; and in such cases more than one county may be included in the Senatorial district; though to prevent *gerrymandering*, that is, the division of the State in such a manner as to gain an improper political advantage, it is usually provided that in the formation of these districts no county shall be divided, and that they shall consist of contiguous territory. And in like manner the Assembly districts are formed, but as the number is almost always made to depend upon population, a new districting of the State is rendered necessary with every new enumeration of the people, which occurs generally once in ten years. The apportionment is usually made by the Assembly, but in Michigan, where a county is entitled to more than one Representative, the Board of Supervisors, a county institution, makes the necessary division into Representative districts.

Of the qualifications required of [State] Senators and Representatives little need be said; and it will

not be necessary to give the various differences that exist among the States. In general, there are requirements as to age and citizenship, and a certain length of residence in the State, county, or district. Formerly a greater number of qualifications were required: such as the possession of 300 acres in fee (No. Ca.), must be a tax-payer (Ill., Mo., etc.), must be of the Protestant religion (N. H.), or he must be a person "noted for wisdom and virtue" (Vt.). In the Kentucky constitution of 1850, which is still in force, occurs the curious provision: "No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, . . . shall be eligible to the General Assembly." (Art. ii, § 27.)

In order to secure the independence of the legislator, and remove him from outside influences that might bias his judgment, no person holding any office of trust or profit under the United States or the State, shall be eligible to a seat in the State Legislature. Furthermore, in some States no member of the Legislature can receive a fee or serve as counsel, agent, or attorney in any civil case or claim against the State. But apart from these limitations any qualified elector may be elected to the Legislature.

When a vacancy occurs in either House, the governor of the State, or the House in which the vacancy occurs, or the presiding officer of the House, issues

writs of elections to fill such vacancy, the practice differing among the States.

The privileges of State Representatives are very much the same as those of national Representatives, and, like them, they are privileged from arrest in civil process during the session of the Assembly, and for a reasonable period before and after, to enable them to go and return from the same. In Rhode Island the exemption is extended to their property, and their estates cannot be attached within a prescribed period. The proceedings of the Houses are governed by the ordinary rules for regulating the conduct of business in legislative assemblies. But the restrictions on legislation are in many States greater than are to be found in the rules of Congress. Thus in some states (Alabama, Colorado, etc.), a bill must have been referred to a committee of each House and returned therefrom before it can become a law, and thus by a constitutional provision, a committee is made an essential part of legislation.[1] In many States limitations are imposed on the time for introducing measures. Thus in Arkansas, "No new bill shall be introduced into either House during the last three days of the session." And in Colorado, where the session of the Legislature is limited to forty days, no bill, except the general appropriation for the expenses of the government, introduced into either House of the General Assembly after the first

[1] In Kansas *all* bills must originate in the lower House.

twenty-five days of the session, shall become a law.[1]

Again it is very commonly provided that no bill shall contain more than one subject, which must be clearly expressed in its title; and that whatever may be in the bill that is not so expressed in the title shall be excluded. Such a provision is found in the constitutions of Minnesota, Kansas, Maryland, Kentucky, Nebraska, and Ohio. And under somewhat different forms a large number of the constitutions of the other States contain a similar limitation. The provision was intended to prevent the union in one bill of measures that have no proper relation to another, and thus do away with a fruitful cause of log-rolling and corrupt legislation.

The tendency of the Legislature to assume powers which do not properly belong to it, and thus encroach upon the functions that rightly should be exercised by the executive or judicial branches of the government, is constantly increasing not only in the national but also in the State governments.[2] And

[1] These provisions are, however, constantly evaded. A bill introduced in due season may have amendments, which are in reality new measures, added to it after the time when a new bill may be originated has expired. The bill as originally introduced may be, for example, a bill to incorporate the city of Siam. "One of the member's constituents applies to him for legislative permission to construct a dam across the Wild Cat River. Forthwith, by *amendment*, the bill entitled a bill to incorporate the city of Siam, has all after the enacting clause stricken out, and it is made to provide, as its sole object, that John Doe may construct a dam across the Wild Cat. With this title and in this form it is passed; but the House then considerately amends the title to correspond with the purpose of the bill, and the law is passed, and the constitution at the same time saved." Cooley, "Constitutional Limitations," p. 139, note.

[2] See Webster's Speech on the Independence of the Judiciary in vol. iii of his works.

in the matter of special or private legislation the evil is even more apparent in State than in national legislation. Such legislation is arbitrary, and is subject to grave abuses. Fully two thirds of the measures acted upon during each session of the Legislature is of this nature, and could be accomplished by general laws applying to the whole State. The magnitude of the evil has been recognized, and in all the later State constitutions limitations have been placed on the powers of the Legislature. And a further step in this direction is in making the sessions of the Legislature biennial instead of annual, a change that is being generally adopted among the States.

As an example of the constitutional limitations on the Legislature, the provisions of the constitution of Pennsylvania (1873), which are very sweeping, may be cited:

"The General Assembly shall not pass any local or special law—

"Authorizing the creation, extension, or impairing of liens;

"Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts;

"Changing the names of persons or places

"Changing the venu in civil or criminal cases;

"Authorizing the laying-out, opening, altering, or maintaining roads, highways, streets, or alleys;

"Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of

bridges crossing streams which form boundaries between this and any other State;

"Vacating roads, town-plats, streets, or alleys;

"Relating to cemeteries, graveyards, or public grounds not of the State;

"Authorizing the adoption or legitimation of children;

"Locating or changing county seats, erecting new counties, or changing county lines;

"Incorporating cities, towns, or villages, or changing their charters;

"For the opening and conducting of elections, or fixing or changing the place of voting;

"Granting divorces;

"Erecting new townships or boroughs, changing township lines, borough limits, or school districts;

"Creating offices or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts;

"Changing the law of descent or succession;

"Regulating the practice or jurisdiction, or changing the rules of evidence, in any judicial proceeding or inquiry, . . . or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

"Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

"Regulating the management of public schools, the building or repairing of school-houses, and the raising of money for such purposes;

"Fixing the rate of interest;

"Affecting the estates of minors or persons under disability, except after due notice to all parties in interest, to be recited in the general enactment;

"Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the treasury;

"Exempting property from taxation;

"Regulating labor, trade, mining, or manufacturing;

"Creating corporations, or amending, renewing, or extending the charters thereof;

"Granting to any corporation, association, or individual any special or exclusive privilege or immunity, or to any corporation, association, or individual the right to lay down a railroad track;

"Nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law, but laws repealing local or special acts may be passed;

"Nor shall any law be passed granting powers or privileges in any case where the granting of such power and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same or give the relief asked for."
—Art. iii, § 7.

And in § 8 of the same article it is provided that

when a local or special bill is to be passed, for it would be impossible to provide by general legislation against every possible contingency that might arise, due notice of the same shall be published in the locality where the matter or the thing to be effected may be situated, for at least thirty days prior to the introduction of the measure into the General Assembly,—a very proper restriction.

The Executive.

In its ordinary signification the administration of government is limited to executive details and falls peculiarly within the province of the executive department. The Legislature does not execute the laws, it directs what is to be done, and prescribes the manner of doing it, but leaves the actual performance to the executive department. As this performance requires promptness of action and singleness of purpose, all the executive powers are vested in a single officer,—the President in the national government, and the governor in the State. Both are elected by the people, the President indirectly, and

[1] The manner of electing the President and Vice-President is peculiar, and they are the only officers who hold their offices by that mode of election. Thus the final election is made by a number of electors chosen for that express purpose, and forming the *electoral college*. The people of each State choose a number of electors equal to the number of Senators and Representatives to which the State is entitled, and these electors meet on a certain day and cast their votes. In theory each elector exercises his judgment in casting his vote; but under the system of parties the elector is already pledged to vote for the party's nominee, and the result becomes known at the general election when only presidential electors are supposed to be chosen. The meeting and voting of the electoral college has thus become an unmean-

the governor directly, and both possess powers of a similar nature. Thus the President is the commander of the national army and navy, of the State militia when in actual service; the governor is commander of the State forces when not in actual service. The President may, by his veto, compel the Legislature to reconsider a measure that has already passed both Houses; and the State governor possesses a like check on the Legislature.[1] The President may grant pardons and reprieves for offences committed against the United States, except in cases of impeachment; in like manner the governor may grant reprieves, commutation, or pardon after conviction for all offences except treason and impeachment, and may grant such pardons, etc., on any conditions he sees fit to impose. The President by and with the advice and consent of the Senate appoints ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose manner of appointment is not otherwise provided for, and he commissions all the officers of the United States; the governor under the same limitations appoints all State officers whose appointments are not otherwise provided for. Both have certain powers regarding the removal of officers and of filling such vacancies as may occur.

ing formality, and it is doubtful if it has any effect in rendering the selection of a President more simple or less exposed to fraud. It is probable that before the next presidential election some modifications may be made in the present system.

[1] In Rhode Island and Virginia the governor has no veto power.

Both may be impeached, and both have certain powers over the sessions of the Legislature, such, for instance, as calling an extra session.

But there are other subjects in which the powers of the national and State executive are different, and this difference arises chiefly from the sphere of action proper to each. Thus, the President regulates the relations of this country with foreign powers; he may enter into treaties, whether of commerce, extradition, or for general purposes, with foreign powers; and when ratified by the Senate such treaties become a part of the law of the land. All war powers are vested in the President, for he may in emergencies *make* war, although Congress alone can *declare* war. The relations with foreign powers cannot be exercised by the State executive, for they are essentially national relations, and affect all the States; and while the governor may in case of actual invasion call out the militia and repel invasion or suppress insurrection, yet his war powers are of a very limited character. He may do this because the emergency calls for prompt and decisive action; and as for suppressing insurrections, that is more properly a part of the police power of the State, and not a war power.

The subjects that fall under the supervision of the Executive are so varied and numerous that no one person could ever master their details or gain that knowledge of them that an efficient administra-

tion would demand. The real administration is, in the national government, divided among a number of departments, each embracing but a portion of the executive functions. Thus, whatever relates to the intercourse between this country and foreign nations is entrusted to the management of one department; the care and management of revenue and expenditure accounts are given to another, and so on. Over each department is placed a chief, usually known as a secretary or commissioner, who, as a part of the executive department, becomes responsible to the President for the conduct of his department; and these chiefs of departments, in addition to the duties imposed on them by Congress, form an advisory or privy council to the President, and as such constitute the *Cabinet*. The meetings of the Cabinet are secret, and no record is kept of their sessions. And while the President may demand the opinions of the heads of the departments in writing, he is not bound to adopt them. These chiefs of departments are subject to impeachment, and hold office only during the term of the President by whom they were appointed.

In describing in very general terms the powers and functions of each department, we are in reality describing the functions of the executive department of the Federal government. When that government was first formed but three departments were created, that of foreign affairs, war, and treasury. But with

the vast increase in the subjects that are brought before the Executive, the number has been increased to seven, though the chiefs of but six are entitled to seats in the Cabinet. Further additions, such as a department of labor and industry, of commerce, etc., have been recently proposed, but it is believed that the present number is sufficient to insure a proper performance of the manifold duties belonging to the executive department.

The Department of State was created by the act of July 27, 1789, under the title of Department of Foreign Affairs, and ranks as the most important of the departments. It is through this department that all intercourse with foreign nations is held, and in the proper conduct of many of the delicate questions arising in international relations, often depends the question of peace or war. It negotiates all treaties, and the importance of this function may readily be seen when the number and terms of treaties are considered. Not only are there treaties of peace, by which important boundaries are determined or cessions of territory made, or important rights acquired, but there are treaties for regulating the commercial intercourse of nations, for extraditing criminals, and for protecting the rights of subjects or citizens when outside of their own States,—treaties which do not arise from war, but the rejection of which by the Senate, or the infraction in any particular by either contracting party, may become a cause of war. In

fact, in the framing of treaties the Executive may originate legislation, for the provisions of a treaty when accepted by the Senate become a part of the law of the land, and as such take rank with the Federal Constitution, overriding all State legislation that may militate against them. These communications between the governments of nations pass through public ministers, and other public officers duly appointed and representing their respective governments abroad.

In addition to the management of all foreign affairs, the State Department publishes all laws and resolutions of Congress, amendments to the Constitution, and proclamations declaring the admission of new States into the Union. The Secretary of State conducts the correspondence between the President and the chief Executive of the several States; and he is the keeper of the great seal of the United States, and countersigns and affixes the seal to all executive proclamations, to various commissions, and to warrants for pardon of criminals and for the extradition of fugitives from justice.

Next in importance stands the Treasury Department, created by an act of September 2, 1789, and has the management of the public finances. The duties of the Secretary are of a threefold character: he superintends the collection of the public revenues; he supervises the expenditure; and he has the management of the public debt and the national

currency,—on the proper conduct of which depends the public credit, which exercises such an important influence over the prosperity of a nation.

But one of his most important duties is to prepare the estimates of the necessary expenditure of government. Each department prepares, in the autumn of the year, an estimate of what amount of expenditure it will make during the coming year, and these estimates, the items of which are given in detail, are sent to the Secretary of the Treasury who submits them to Congress. In the House they are referred to the Committee on Appropriations, and in the Senate to the Committee on Finance, although the various estimates may be reviewed by other committees which supervise the several departments of government, such as the committees on foreign affairs, naval affairs, pensions, etc. The bill is then discussed in the Committee of the Whole House, in which it is subject to alteration or amendment; and when so amended it comes before the House, and on being adopted is sent to the Senate to be discussed by that body.[1]

The Treasury Department contains a number of bureaus charged with important functions. In addition to the comptrollers and auditors who govern the manner of disbursing the public expenditures authorized by law, there are a commissioner of cus-

[1] The manner of preparing and submitting the budgets of the State government is essentially the same, the comptroller acting in place of the Secretary of the Treasury.

toms, a commissioner of internal revenue, a treasurer, a register, a comptroller of the currency, a director of the Mint, and a solicitor, the last-named being the law officer of the department. In addition to these officers of finance there are others belonging to branches of the public service which, though not pertaining to the regulation of the finances, are under the care of the Secretary. Thus he controls the erection of public buildings, the collection of commercial statistics, the marine hospital, light-houses, buoys, beacons, etc., etc.

The Department of War was created by the act of August 7, 1789, and that of the Navy by the act of April 21, 1806. The duties of these departments, which are fully apparent only in a time of war, are sufficiently indicated by their titles.

The Department of the Interior is of recent formation, being constituted March 3, 1849, and has charge of functions which formerly belonged to other departments. Its duties are varied and important, and are indicated by the titles of the chiefs of the various bureaus :

Commissioner of Patents,
Commissioner of Pensions,
Commissioner of the General Land Office,
Commissioner of Indian Affairs,
Commissioner of Education,
Commissioner of Railroads,
Director of the Geological Survey, and

Superintendent of the Census.

Although a Postal administration was formed by the act of February 20, 1792, the Postmaster-General did not take rank with the heads of the executive departments, and not until 1825 did he become a member of the Cabinet. In like manner the office of Attorney-General was created in 1789, but it was not until 1870 that he became the head of the Department of Justice, and all law officers previously attached to the other departments were transferred, and placed under his supervision. His duty is to interpret the laws, and act as the legal adviser of the President and heads of departments, and to represent the United States before the Supreme Court.

The heads of these six departments form the Cabinet. The seventh department is that of Agriculture, presided over by a commissioner, who is charged with duties of doubtful utility.

There is no body corresponding to the Cabinet connected with the State governments. In the original States of the Union there formerly existed a council, consisting of about seven members elected by the Assembly, and whose duty it was to advise the governor on State matters. But they presided over no executive department, as do the members of the President's Cabinet, unless State officers were from their position entitled to a place in the council. A record of the proceedings of the council was kept, which still further distinguished it from the Cabinet.

In some States the council even exercised some executive functions, as in Virginia, where it shared the administration of affairs with the governor. In Florida the chief administrative officers of the State still form a "Cabinet," and assist the governor in his duties; but as these officers are elective, they do not form a Cabinet in the sense in which the term is used in the national government. In Maine this advisory council is still maintained; but in the other States it has been abolished, and its duties transferred to other officers. Other executive councils are met with, such as those for revising laws, councils of revision, or for filling offices, councils of appointment, but they have never been generally employed.

The chief officers of the State executive are a Secretary of State, attorney-general, auditor-general, and treasurer, all of whom hold their office by popular election. Other officers, such as a State surveyor-general, a State engineer, superintendent of education, inspectors of State prisons, and many others, are to be met with among the different States, and properly form a part of the executive branch of government. But it will not be necessary to describe in detail the functions of these officers. Moreover, many of the officers that are found in the minor divisions of the State, such as sheriffs, coroners, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or con-

trollers, clerks of the courts, district attorneys, and a large number of others, are properly State officers, charged with the performance of a part of the State action, and the nature of their duties is not altered by the fact that they are elected by the inhabitants of the various districts in which they perform their functions. The duties of many of these officers will be shown when the means of protecting life and property, the care of the poor and insane, and the revenue and expenditure of government are treated of. The relations of the executive with the people are so far-reaching, and the number of different officers necessary to carry into effect State action so large, that an enumeration of the chief of these officials must suffice.

The Vice-President and Lieutenant-Governor have no powers, and merely preside over the upper House in the National and State Legislatures, but cannot vote except when the House is equally divided. Contingencies may arise where this power of deciding a vote is of vast importance; but this fact does not alter the general proposition that these officers are of very little importance. In case the chief executive office becomes for any reason vacant, it is filled by one of these officers, the Vice-President in the National, and the Lieutenant-Governor in the State government. Alabama and Arkansas have no lieutenant-governor. In case the governorship becomes vacant, the president of the Senate, chosen by and from among its members, succeeds.

The Judiciary.

There is little of a political nature in the judiciary, and in this it differs from the executive and legislature. Its proper duty is to hear and determine litigated causes, to administer justice, and to interpret and enforce the law, and it must do this freed from the control or influence of government authority. For this reason there is as complete a separation as possible between this branch and the coordinate branches of government, and this is especially marked in the constitution of the Federal courts. Thus, no judge can occupy any other official position; the judges are appointed, and hold their office during good behaviour; and the salary of the judges cannot be diminished during their continuance in office. In the State judiciary the judges are, in a majority of the States, elected by popular vote, and they hold their places for terms which vary within wide limits. This feature will be subsequently referred to. Judges cannot be held liable to a civil action or a criminal prosecution for acts done in the performance of their duty. The only method by which they may be brought to answer for misconduct is by impeachment; however, in some States a judge may be removed by a concurrent vote of both Houses of the Legislature, but the judge against whom the charge is made is allowed to defend himself.

The organization and powers of the judiciary are

properly matters of legal interest, and do not belong in a political manual. Suffice it to say that the Federal system consists of a supreme court, sixty district courts, the number being subject to increase, nine circuit courts,[1] and a court of claims. Each court or class of courts has a particular class of actions to deal with originally, and also certain appellate jurisdiction. In like manner each State has a system of courts which extends to its smallest political divisions. In the Southern and some of the Western States the county courts possess powers respecting roads, bridges, ferries, public buildings, paupers, county officers, and county funds and taxes; but it is more usual to maintain, as far as possible, a separation of the administrative and judicial functions, giving the former to the executive and confining the judiciary to an interpretation of the law.

The Jury System.

In this connection may be mentioned trial by jury, an institution that is expressly recognized by every constitution, State and national, and is justly regarded as one of the best securities of the rights and liberties of the citizen. In this the citizen personally takes an active part in the administration of justice; and he has not only the right to demand a

[1] There are in these minor judicial divisions a number of Federal officers such as district-attorneys, marshals, and deputy marshals, etc., for securing the ends of justice. The United States uses the State jails for its own prisoners, thus saving the expense of maintaining double establishments.

trial by jury when on trial for any crime,[1] but he also has the right of serving on a jury in the trial of a fellow citizen, when called upon to do so.

There are two classes of juries, grand jury and petit jury. The grand jury consists of not more than twenty-four or less than twelve members, the usual number being twenty-three, so that twelve form a majority, and the concurrence of that number is required on any matter that is to be acted upon. A list of the freeholders or tax-payers of the county is prepared, and from this list the Sheriff or Marshal designates by lot the names of those who shall be summoned to serve, and when the requisite number is obtained a foreman is chosen. This organization is called the "impanelling" of the jury. The sessions of this jury are secret, and its duty is to examine into charges against persons that are submitted to it, and after taking testimony, wholly on the side of the prosecution, to determine whether the accusations are true or false. If true it finds "a true bill" against the accused, and the matter then comes up before a court and petit jury for trial. But if the majority are convinced that the charges are groundless, the indictment is labelled "not a true bill," and no further proceedings are taken. While it is usual for the grand jury to pass upon such indictments only as are presented to it by a prosecut-

[1] An inferior class of offences which come before the lowest courts, courts of special sessions, and police magistrates, and offences committed in the army and navy are not tried by jury.

ing officer of the government, it may itself originate prosecutions, by making a presentment or accusation upon its own observation or knowledge. The grand jury is thus a sort of committee for passing upon the question as to whether the evidence submitted to it is sufficient to warrant a trial of the accused.

The petit jury, whieh is composed of twelve members chosen in the same manner as those of the grand jury, has a very different function. It must pass upon all questions of *fact* that comes before them during a trial, the *law* being decided by the judge. And in order to secure an impartial jury the right of challenge is allowed; that is, one of the parties to the suit may object to a person serving as a juror on the ground that he is prejudiced, or has already expressed an opinion on the matter in question. In addition, a certain number of peremptory challenges, for which no cause need be given, are allowed, the number of such challenges varying with the grade of the offence, and also among the different States. The jury must be unanimous, or no result can be attained, thus being distinguished from the grand jury, in which the decision of a majority is sufficient. It is an open question whether it would not be well to allow a majority, not a bare majority, but say two-thirds or three-fourths of the members, to decide a question. The jury acts as a check upon the power of the judge, and at the same time the

judge limits the power of the jury in his *charge*, in which he instructs them on the law involved.

When summoned the persons selected to serve must do so, unless they are excused by the judge or other officer. In New York City a person may be excused if he can show that he is necessarily absent from the city and will not return in time to serve, or that he is physically unable to serve, or that one of his near relatives is dead or dangerously sick. The following persons are exempt from jury duty: every person who is not at the time he is summoned possessed in his own right or that of his wife, of real or personal estate of the value of $250; ministers of the gospel, professors and teachers in colleges or public schools, practising physicians, and attorneys and counsellors of the Supreme Court in actual practice, provided that any such person is not engaged in any other business; every person holding office under the United States, the State, city, or county of New York, whose duties at the time shall prevent his attendance as a juror; all persons actually engaged in business as pilots or engineers; all captains and other officers of vessels; all consuls of foreign nations; all telegraphic operators; members of the grand jury, and of the State militia, or citizens who have filled a term of service in the militia.[1]

A juror receives a salary which is usually a certain

[1] An act in relation to Jurors in the City and County of New York, passed May 12, 1870.

sum for every day on which he is actually on jury duty.

Territorial Government.

The organization of the Government of a Territory is of a provisional character, being intended only to exist during the time that elapses between the erection of the territory by Congressional enactment, and its admission into the Union as a State. During this period it is under the direct control of Congress. The chief executive office, a governor, is appointed by the President with the consent of the Senate, and holds his office for four years unless removed before the end of that time. He exercises most of the duties that belong to a governor of a State, but his acts are subject to the control of the national executive and Congress. All administrative and judicial officers are appointed by the President. The territorial Legislature is vested with certain powers of local self-government, but Congress may so far legislate for the territory as to add to or subtract from the extent of the territory, or to extinguish the existing government. It is represented in Congress by a delegate who may take part in the discussion of affairs, but cannot vote. When a territory attains a population sufficient to entitle it to one representative in Congress, by a special act it is allowed to frame a constitution, and is then admitted into the Union as a State.

The District of Columbia is a territory, and is under the immediate government of Congress, but is not entitled to send a representative or delegate to that body. Alaska has as yet no organized government, but by special acts of Congress the Secretaries of War and of the Treasury exercise certain powers along the coast.

CHAPTER II.

LOCAL GOVERNMENTS.

As the Federal Government does not undertake to administer matters that concern a single State, so within the State there exist a number of local governments exercising control over local matters which pertain to a limited extent of territory. These governments are concerned with the regulation of counties and townships, political divisions of the State for convenience of government. Such divisions, together with others created for special objects, such as school districts and road districts are formed under general laws of the State, and do not require a special charter, as in the case of cities and towns.

In passing from an examination of the national and State governments to that of counties and townships, an almost entirely different field of investigation is entered upon. In the former there are three great branches of governmental action, the executive, the legislative, and the judicial, each presiding over a separate department of government, and exercising independently the functions that properly belong

to it. The legislative power, moreover, stands pre-eminent in its action, and is in importance equal if not superior to the other departments. The functions of a local government are, on the contrary, almost wholly of an administrative nature, and consist essentially in superintending the collection of taxes, and regulating expenditure. Moreover, all the power possessed by such governments is granted and conferred upon them by the State government, and that, too, by express statutes. So that the officers in such governments are little else than agents of the State. They possess little discretion in the use of their powers, and hence there is little of real legislation in such governments. The regulation of local affairs is entrusted to a single board, one body, thus offering a complete contrast to the organization of the national and State Legislatures. And, besides, the justices of the peace, who represent the judiciary, possess very limited powers as compared with those of the State and national judiciary. So that the executive predominates, and the course of action is all defined and limited by the State Legislature. The county and township are recognized by the Constitution of the State of New York and other States as regular subdivisions of the State for the purposes of government, and thus they cannot be extinguished. But as all grant of power is derived from the State, and may be altered or modified as the State wishes, the State may withdraw all the powers of govern-

ment they possess, and, through its Legislature or other appointed channels, govern the local territory as it governs the State at large. For this reason it is proper to consider these local governments not as separate and distinct governments, but as creatures and agents of the State government.

A county is a division of the State formed for political convenience, and endowed with certain powers of government and administration over local affairs, but which are but a part of the general policy of the State. It is, moreover, a division that is formed by the State of its own will, and not, like municipal corporations, which will be treated of in this chapter, by the solicitation or consent of the people who inhabit them. Its powers are derived from the State, and there is a great difference in these powers among the different States : they generally relate, however, to the support of the poor, matters of county finance, the establishment and repair of highways, military organization, and especially to the general administration of justice. Not only are the powers of the county subject to the control of the State Legislature, but its name, boundaries, and officers are also regulated by legislative enactment.

The powers granted to a school district are of a very limited nature, and relate, as the name would suggest, almost wholly to the care and maintenance of public schools. "They have no powers derived from usage. They have the powers expressly grant-

ed to them, and such implied powers as are necessary to enable them to perform their duties and no more. Among them is the power to vote money for specified purposes, and the power to appoint committees to carry their votes relative to those purposes into effect. . . . These committees are special agents without any general powers over the affairs of the district, and their powers are confined to a special purpose; and no inference can be drawn from the general nature of their powers."[1] And the same may be said of road districts.

A township (also called a town) is a subdivision of the county, and possesses certain powers of self government, which, like those of the county, differ in the various parts of the Union. Taking, however, the county and township governments, the different systems may be ranged in three classes according to the political division that forms the unit of government. These classes are called the Township system, the County system, and the Compromise system. In the first the township is the political unit, in the second the county, and in the third the powers are divided, a part being given to the county and a part to the township governments. A somewhat extended notice of these three systems will not be out of place, before passing to the government of municipal corporations, or incorporated towns, villages, and cities.

[1] Harris *vs.* School District, 8 Foster, N. H. 58–61.

In the six New England States the town existed before the county or State, and originally exercised over very limited territories all the powers which are now possessed by the State. This arose from the manner in which they were formed. Wherever there was a collection of dwellings, there was a town, and as the number of such places increased, boundaries were defined, and the township arose which might include a number of the original settlements or villages. The State was formed by a union of such townships, just as the federal government was formed by a union for certain purposes of the States. The township was then entitled to an independent representation in the lower branch of the State Legislature. Originally each town in the State was entitled to such a representative; but in order to apportion representation more strictly with population, Maine and Massachusetts have substituted the district system, which involves a union of smaller towns for the choice of representatives. When the State government was instituted the powers of these towns were very much curtailed by the cession of certain powers they had to make to it; but the town is the political unit. The details of affairs of the town are entrusted to *selectmen*,[1] the number of such vary-

[1] Selectmen appear to have been first chosen in Boston, Mass., in 1634. And in the following year the inhabitants of the neighboring town of Charlestown, ordered, that "in consideration of the great trouble and charge of the inhabitants of Charlestown by reason of the frequent meeting of the townsmen in general, and by reason of many men meeting, things were not so easily brought into a joint issue," eleven men should be chosen to manage such business as shall concern the townsmen, the choice of officers ex-

ing from three to nine, who are elected annually, and are merely superintending officers acting under the votes and direction of the people of the town. The duties of the selectmen are to register voters and to provide means for carrying on elections; to establish fire departments, lay out highways, and in general manage all town affairs. The more important of the town officers, also elected annually, are a town clerk, three or more assessors, three or more overseers of the poor, a treasurer, one or more surveyors of highways, three or more members of school committee, and constables who collect the taxes when no collectors are chosen.

But the most distinctive feature of New England government is the town-meeting, which is purely democratic in form and in principle. Once each year, or oftener, the selectmen assemble all the voters of the town by notice, which is posted in public places or served upon each voter, and must be given at least ten days before the day fixed for the meeting. The object of the meeting must be clearly stated in the notice, so that the voter has ample opportunity of coming to a decision upon what is to be submitted to and passed upon by the meeting; and as no business not mentioned in the notice can be discussed, job-

cepted. The advantages of such a delegation of powers were soon recognized by the General Court of the State, and it was generally adopted. This is the germ of the system of local government in New England which has from time to time been modified to suit the public needs and convenience. "The towns have been, on the one hand, separate governments, and, on the other, the separate constituents of a common government."

bery and hasty action are prevented. At the meeting the selectmen and the school committee report upon what has been done in the previous year, and what is necessary or desirable in the coming year. Every voter in the meeting has an equal right to approve or reject the propositions submitted to him, and to state his reasons for such action. The powers of the town meeting are very wide and include the regulation of many important, although only local, affairs. The act creating and recognizing them clearly explains their object: "as particular towns have many things which concern only themselves, and the ordering of their own affairs, and disposing of business in their own towns," it was ordered that "the freemen of every town, or the major part of them, shall have power to dispose of their own lands and woods, with all the privileges and appurtenances of said towns, to grant lots, and to make such orders as may concern the well-ordering of their own towns not repugnant to the laws and orders established by the General Court." The town meeting may enact by-laws and ordinances for the regulation of town affairs; elect all town officers; appropriate moneys for the support of the schools, for the maintenance and employment of the poor; for laying out and repairing highways, and for all other necesary town charges. It is in its nature a legislative and deliberative assembly; and although the township system has been adopted in some of the Western

States, the town meeting has lost its legislative character, and become only the machinery for electing town officers. It is thus deprived of one of its most distinctive characteristics. "A town meeting is a surer exponent of the will of the people than a legislative assembly, whether state or national. The nearer you come to the fountain of power, the people, the more clearly you perceive public sentiment, and learn the popular will." [1]

The county in the New England States came into existence sometime after the formation of the township, and is a judicial rather than a political division, being formed to define the jurisdiction of the courts of justice. In Rhode Island there are no county officers other than judicial; but in other New England States there are county officers of administrative powers. Thus in Massachusetts there are in each county three county commissioners, and one county treasurer, all of whom are elected and hold office for three years, one commissioner being chosen each year. To this Board is entrusted the management of the county buildings (such as the court house, jail, house of correction, etc.); and it has power to lay out new highways from town to town, to license inn-holders and common victuallers, to estimate the amount of taxes necessary to meet the county charges (which is, however, submitted to the State Legislature for approval), to apportion the county taxes

[1] On town meetings as schools of government consult "Tocqueville's Democracy in America," also "Mills' Representative Government."

among the cities and towns of the county, to negotiate temporary loans, and to perform many other functions which are appropriate to the maintenance of county institutions.

This system, in which the town forms the political unit, prevails only in the six New England States.

In the Southern States a very different system prevails, in which the county possesses the political power; and while the county is created by the State Legislature, yet its subordinate divisions are formed by its (the counties) own officers and possess no powers whatever, being merely a division for convenience at elections or to mark the jurisdiction of a justice of a peace and constable.[1] The town, then, so far from being, as in New England, the political unit, exists only as a geographical division, with little or no powers of local government. The history of the South is the cause of this. Thus, in the early history of Virginia the population was widely distributed, and the land held in large estates by a comparatively small number of owners. There was neither the occasion nor the necessity of that self-government which was so early constituted in New England, and little attention was paid to the management of such local matters as require regulation in a densely populated district. The town was un-

[1] These divisions are variously known as *precincts*, (Alabama, Florida, Texas, etc.); *townships* (Arkansas, California, etc.); *hundreds* (Delaware); *militia districts* (Georgia); *wards*, (Louisiana); *election districts* (Maryland); *supervisor's districts* (Mississippi); and *civil districts* (Tennessee). The *parish* of Louisiana corresponds to the *county* in other States.

known in Virginia, and the division into counties or districts was made for judicial purposes; for defining the jurisdiction of justice, and to facilitate the collection of the revenues of the State. The town meeting has, therefore, no existence, and the administration of affairs belongs to the county officers.

As early as 1621 Commissioners of the county courts were appointed in Virginia to hold monthly courts in the more remote regions of the State, and in process of time the management of the fiscal and other matters of county administration was entrusted to them. In some of the States which were formerly under the county system, further inroads into county organization were made, and some of the features of the township government adopted, but not to such an extent as to make the name of county system inapplicable. And as Virginia is among those States, it will be better to take Alabama as a model of the county system, for very few such modifications have been made in the organization of local governments in that State. The officers of the county are the Board of County Commissioners (called also the Court of County Commissioners), Assessor, Treasurer, Collector, Superintendent of Education, Apportioners of Roads, and Overseer of Roads. These officers are charged with the control of the county property, the assessment and collection of State and county taxes, the division of the county into election or other districts, the laying out and re-

pairing of roads, the construction of bridges, the care of the poor, the police of the county, etc., etc. The general control of these matters belong to the Board of County Commissioners, but the different functions are divided among the county officers, as their names clearly show. In some States the duties of the assessor are performed by the sheriff, by an assessor of one of the minor divisions of the county (of the hundred, precinct, or civil district), or a tax collector; and in others—Arkansas, Oregon, and Texas—the taxes are even collected by the sheriff. The members of the Board of County Commissioners are elected by the county at large, except in Florida, where they are appointed by the Governor, as are all other principal officers of the county; the Assessor, Collector, and Superintendent of Education are also elected by the county. The Board of Commissioners appoint the Treasurer, although he is in some States appointed by the Governor, or even elected by the people; three apportioners of roads, and an overseer of roads for each road district.

Under such a system it will be seen that the greatest advantage to be derived from the township system of New England, the political education of the citizen, is wholly wanting. The citizen casts his vote on the day of election, but there his political duties begin and end, for the settlement of all questions of administration is left to the county officials.

The county system, in various forms, exists in seventeen States; viz.: Alabama, Arkansas, California, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Nevada, Oregon, South Carolina, Tennessee, and Texas.

In the third system of local government, known as the "compromise system," the county possesses wider powers than is given it in the town system, and the town becomes a more important political factor than it is in the county system. The counties are created by the State Legislature, and exercise whatever powers are granted to them by statute. The townships are formed by the county officers (in New Jersey by the State Legislature, an example that has been copied by no other State), and they may elect their own officers, and regulate their own local affairs, subject, however, to the control of the county. The township, then, although it has it own town-meeting to vote taxes and pass upon local affairs, does not possess the independence of the New England township, but is subject to regulation by the county, an arrangement that is unknown in the purely town system. "The county thus becomes a more important factor in the administration of local affairs than in New England. Its executive officers are required to discharge all duties properly connected with the county administration, and, in addition, to audit the accounts of township officers

and accounts and claims against the township, and direct the raising of funds for their payment, to approve of votes of the township for borrowing money or incurring any extraordinary expenditure, and to levy on the property of the township such taxes for township purposes as may be duly certified to them by the township officers."[1]

The control of county and township affairs is exercised by a Board of Supervisors. In New York and some other States each town of the county elects one supervisor, and are thus represented as equal political communities. But in Pennsylvania and other States which have adopted her system, the affairs of the county are under the control of a board of three commissioners elected from the county at large. And this important distinction exists, in that while the supervisor in New York is both a county and a town officer, in Pennsylvania a county commissioner has no township duties whatever. The other county officers are a treasurer, a clerk, a school commissioner, and in a few States, (Indiana, Iowa, Minnesota, and Ohio) an auditor. Their duties are sufficiently apparent from their respective titles.

The town is under the control ot the Board of Supervisors, yet it has some important powers which are within certain limits independent powers. Thus, it may lay out roads within its own limits, but should the Town Commissioners of Highways refuse to do

[1] "Statistical Atlas to Ninth Census." We have used freely the facts collected by Mr. Galpin in this work.

this, the county Board intervenes and appoints special commissioners for the purpose. The town determines the amount of town taxes to be levied for town purposes, and manages its schools and other local affairs. But in all questions relating to the assessment and collection of taxes, the borrowing of money, etc., the approval of the Board of Supervisors is requisite. Thus, all votes of the town for borrowing money must be submitted to it; it must audit all town accounts, levy all taxes, and equalize the assessments of the several towns in the county. And so far does this power extend that the Board may, by a two thirds vote, erect a new town or alter the boundaries of an existing town—a power which in the town system belongs exclusively to the Legislature. The principal officers of the town are elected, and comprise a supervisor, town clerk, three assessors, a collector, and a commissioner of highways; but if the town so elect, it may have three commissioners of highways.

The compromise system is used in the following States, although it presents many modifications in some of its features; Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

Municipal Corporations.

The forms of local government which have just

been briefly described apply, however, more especially to rural districts where the population is small and scattered, and the matters to be regulated few in number.

"There, every man who would be put forward for election as a 'selectman' or 'supervisor,' or on the various schools or other boards, is known through the township; the duties are discharged for a small salary or gratuitously; the spirit of the place demands economy in all outlays; there are generally no large funds to be kept or embezzled; it is a matter of prime interest that taxes shall be brought down to as low a point as possible; the police, the school arrangements, provision for the poor, for roads and bridges, are on a settled system; so that the town goes on from year to year with little change."[1]

In a densely populated district, the need for combined action on the part of the inhabitants is much more imperative, and the interest thus created so different from those of a rural district, that other and more extensive administrative systems become necessary, and to this fact municipal corporations owe their existence. "It is not the name of the corporate form which gives a city its character as such; but the fact that its inhabitants live closely together—in other words that the population is urban as distinguished from rural. Whenever the pursuits

[1] Woolsey, "Political Science," vol. ii, p. 383.

of agriculture are displaced by those of manufactures, trade or commerce, dense populations spring up, which require local governments radically different from those of the sparsely settled rural districts. The distinctions between such populations are obvious; but the consequences of such distinctions are, in general, not sufficiently apprehended. Wherever a few thousand people come, from whatever cause, to dwell in close proximity to each other, the necessity arises for a local government framed to suit the needs of a compact population. The country highways do not suffice; streets are needed; cleanliness, comfort and health are to be attended to, the streets must be regulated, paved, and cleaned; gutters, sidewalks, and sewers must be constructed. A conflagration would bring a common peril; and common provision must be made for the prevention of fires. Dense populations stimulate vice, immorality, and consequent turbulence and crime, and provision must be made for a suitable police. All these interests are peculiar to such a population, and the necessary expense must be defrayed by contributions levied exclusively within the area inhabited by it. Wherever such a population exists, though it may be very small, a government in the nature of a city government is required." [1]

A municipal corporation is "established by law,

[1] "Report of the Commission to Devise a Plan for the Government of Cities in the State of New York, 1877," p. 23.

to share in the civil government of the county, but chiefly to regulate and administer the local or internal affairs of the city, town, or district which is "incorporated"; and it has been been very appropriately described to be "an investing the people of a place with the local government thereof." These corporations are created by and derive all their powers from the State Legislature, and in articles of incorporation, or *charter*, these powers are described and defined, and the form of government laid down. In granting such a charter the Legislature may, but need not, obtain the consent of the people of the locality to be affected, and, when granted, these instruments are subject to the control of the Legislature. "Public or municipal corporations are established for the local government of towns or particular districts. The special powers conferred upon them are not vested rights as against the States; but, being wholly political, exist only during the will of the general Legislature; otherwise there would be numberless petty governments existing within the State and forming part of it, but independent of the control of the sovereign power. Such powers may at any time be repealed or abrogated by the Legislature, either by a general law operating upon the whole State or by a special act altering the powers of the corporation."[1]

Such municipal corporations may be created un-

[1] Quoted in Dillon's "Municipal Corporations," vol. i, p. 139, where many other like decisions of the courts are cited.

der general laws which apply equally to all, or may each require a special act of incorporation from the Legislature. In Ohio, under a general law, all such corporations are organized into *cities* or *incorporated villages*. An incorporated village is governed by one mayor, one recorder, and five trustees elected annually; and these officers together constitute the village council. The powers of a city government are vested in a mayor, a board of trustees composed of two members from each ward (the political divisions of the city), and such other officers as may be created by the act of incorporation, and which will vary with the size, situation, and general wants of the locality to be governed. The mayor and trustees constitute the city council. In the New England States, however, there exist no general laws for creating municipal corporations, and this is done by granting to the towns special charters by which their powers are widened and the management of municipal affairs is transferred from the town meeting and selectmen to the mayor and council. And it is a curious fact that no city was incorporated in Massachusetts until 1821, the town government existing until that time even in Boston. The cause of a change from a town to a city government at that time is thus given by Mr. Quincy in his Municipal History of Boston, and it is quoted here because it clearly shows how inapplicable the town system is for the government of crowded districts: "In 1821, the

impracticability of conducting the municipal interests of the place, under the form of town government, became apparent to the inhabitants. With a population upward of forty thousand, and with seven thousand qualified voters, it was evidently impossible calmly to deliberate and act. When a town meeting was held on any exciting subject, in Faneuil Hall, those only who obtained places near the moderator could even hear the discussion. A few busy or interested individuals easily obtained the management of the most important affairs, in an assembly in which the greater number could have neither voice nor hearing. When the subject was not generally exciting, town meetings were usually composed of selectmen, the town officers, and thirty or forty inhabitants. Those who thus came were, for the most part, drawn to it from some official duty or private interest, which when performed or obtained, they generally troubled themselves but little, or not at all about the other business of the meeting. In assemblies thus composed, by-laws were passed, taxes to the amount of one hundred or one hundred and fifty thousand dollars, voted, on statements often general in their nature, and on reports, as it respects the majority of voters present, taken upon trust, and which no one had carefully considered except, perhaps, the chairman. In the constitution of the town government, there had resulted in the course of time, from exigency or necessity, a complexity little

adapted to produce harmony in action, and an irresponsibility irreconcilable with a wise and efficient conduct of its affairs. On the agents of the town there was no direct check or control; no pledge for fidelity but their own honor and sense of character." (p. 28.) In 1822 the city of Boston was established and a charter issued to it.

In Massachusetts, when a town has a population of twelve thousand, a charter may, at the request of its inhabitants, be granted to it, and it then assumes the government of a city, electing a mayor, a board of aldermen, and a common council, together with whatever other officers are provided for by the charter. In Vermont, villages containing more than thirty houses may be incorporated by the selectmen of the town, but the officers are not such as are required by a city, but are a clerk, five trustees, a collector and a treasurer; and its powers extend over such matters as relate to sidewalks, nuisances, estrays, police, etc. Another local division in this State is the "fire district," which is formed by the selectmen and possesses certain powers of self-government. Its officers are a clerk, a prudential committee of three, a collector and a treasurer. In Connecticut, cities are formed by special charters; and in the remaining New England States no regular form of incorporation is adopted, but under certain circumstances the local divisions possess the right to manage their own affairs, and particu-

larly as regards the assessment and collection of taxes.

In Alabama municipal corporations obtain their powers under a general law, the charter being issued by a Judge of Probate; although the more general method is to obtain a special charter from the Legislature. The government of these corporations consists of an Intendant, and from five to nine councillors, elected annually. Their powers extend over the police, and, within defined limits, taxation.

Let us examine more closely the organization and functions of a city government. And first as to its functions:

These must be regarded as ranging themselves into two classes, between which there exists an important distinction, and one that is frequently overlooked. Primarily, Judge Cooley says, the duties of municipal corporations are public, and their powers governmental. "They are created for convenience, expediency, and economy in government, and, in their public capacity, are and must be at all times subject to the control of the State which has imparted to them life, and may at any time deprive them of it. But they have or may have another side, in respect to which the control is in reason, at least, not so extensive. They may be endowed with peculiar powers and capacities for the benefit and convenience of their own citizens, and in the exercise of which they seem not to differ in any substantial de-

gree from the private corporations which the State charters. They have thus their public or political character, in which they exercise a part of the sovereign power of the State for governmental purposes, and they have their private character in which, for the benefit or convenience of their own citizens, they exercise powers not of a governmental nature, and in which the State at large has only an incidental concern, as it may have with the action of private corporations. It may not be possible to draw the exact line between the two, but provisions for local conveniences for the citizens, like water, light, public grounds for recreation, and the like, are manifestly matters which are not provided for by municipal corporations in their political or governmental capacity, but in that *quasi* private capacity in which they act for the benefit of their corporators exclusively. In their public political capacity they have no discretion but to act as the State which creates them shall, within constitutional limits, command, and the good government of the State requires that the power should at all times be ample to compel obedience, and that it should be capable of being promptly and efficiently exercised. In the capacity in which they act for the benefit of their corporators merely, there would seem to be no sufficient reason for a power in the State to make them move and act at its will, any more than in the case of any private corporation. With ample authority in the State to

mould, measure, and limit their powers at discretion, and to prevent any abuse thereof, their action within the prescribed limits, in matters of importance to themselves only, it would naturally be supposed should be left to the judgment of their citizens and of their chosen officers."

Moreover, when the functions of a city government are thus divided into what may be called functions of a *political* or *public* and of a *private* character, it will be seen that the number of the latter exceeds that of the former. Thus the administration of justice, the preservation of the peace, and the like are matters of public concern. But to provide for systems of drainage, ventilation, cleanliness, and locomotion; to carry out police regulations regarding nuisances, the preservation of health, the prevention of fires, the storing and use of dangerous articles, the establishment and control of markets, wharves, etc.; to create parks, lay out, open, or pave streets, and to control amusements; and to secure the safety of buildings, these clearly affect only the locality, and are more matters of business than statesmanship. The chief functions of a city government are merely executive and ministerial, and in which politics have little or no place.[1]

[1] "In the most completely developed municipality these powers [entrusted by the State to local governments], embrace the care of police, health, schools, street-cleaning, prevention of fires, supplying water and gas, and similar matters, most conveniently attended to in partnership by persons living together in a dense community, and the expenditure and taxation

The mayor or chief executive officer of the city, and the comptroller, who has charge of the finances of the city, hold their office by election, as it was thought that if the mayor could appoint the comptroller, he would possess too large powers. The traditions of State and National Governments are continued in an elective common council, which is generally, but not always, composed of two bodies. In this State (New York), under the Montgomery charter (1730), the Mayor was appointed by the Governor of the Province, and held office for one year. When the Constitution of 1777 was framed, his appointment was transferred from the governor, and vested in a State council of appointment, which was composed of the Governor together with one Senator from each great district of the State. By the amended charter of 1821, the mayors of all the cities in the State were appointed annually by the common councils of their respective cities, and it was not until 1833 that the mayor was chosen by the electors of the city; and even then this power was confined to New York City, the constitutional provision of 1821 still applying to all other cities of the

necessary for those objects. The rights of persons, property, and the judicial systems instituted for their preservation—general legislation—government in its proper sense; these are vast domains which the functions of municipal corporations and municipal officers do not touch." Governor Tilden's Message, 1875.

But few city governments, however, undertake to supply the city with gas, that privilege being generally granted to a private corporation.

State. The aldermen have been elected since the adoption of the Montgomery charter.

The mayor of a city is an administrative officer, to see that municipal ordinances are executed, and to preside at corporate meetings. In some instances he is even expressly declared to be a member of the city council, and presides over its meetings. But in New York, the mayor is not a member of the common council, although up to the year 1857, he was *ex-officio* a member of the Board of Supervisors. The mayor may be impeached.[1]

But as the executive duties of the mayor are beyond the power of one man to perform, they are divided and distributed among other executive officers, boards, or commissions. Thus, according to the charter of 1870 these various co-ordinate city departments were:—a finance department, law department, police department, department of public works, department of public charities and corrections, fire department, health department, department of public parks, department of buildings, and department of docks; to which was subsequently added a board of street opening. The heads of these departments, except of the departments of finance and law, were appointed by the mayor, as they properly should be.

[1] In the [N. Y.] Constitutional Convention of 1867–68, a report on the government of cities was made, in which it was proposed that the board of aldermen and comptroller should be elected by tax-paying voters, possessing property to the value of at least one thousand dollars; and that the mayor and councilmen should be elected by the whole body of electors. This would result in a mixed government, representing different constituencies.

In all cities there are not the same necessities for regulation and supervision, due either to their geographical situation or economic condition. Some may require a less number of departments, others a greater; but such an enumeration strikingly shows to what vast proportion city government has attained, and how complex a problem it is to secure the proper checks and balances in such a system.

It would be needless to recite the various duties of these departments, for their titles will give a general idea of their functions; and as they perform their duties under the direct control of the common council, and the indirect control of the State Legislature, these powers differ among the different States. They are, however, the machinery for carrying into effect the laws of State and the municipal ordinances and regulations.

Exactly what extent of power the common council possesses depends upon the charter granted to the city. The object is to secure local government, and therefore such powers must be limited to the regulation of local concerns. If it is found necessary, they can be extended or limited by the State Legislature as it sees fit. It will be instructive to enumerate what powers were granted to the Common Council of the City of New York by the charter of 1870, because a general idea of the extent of regulation required will be thus obtained, and it will also serve to place in a clear light what has already

been touched upon, namely, that the larger number of the functions of a city government are of a ministerial and administrative character:

"To regulate traffic and sales in the streets, highways, roads, and public places; to regulate the use of streets, highways, roads, and public places by foot passengers, vehicles, railways, and locomotives; to regulate the use of sidewalks, building-fronts, and house-fronts within the stoop lines; to prevent and remove encroachments upon and obstructions to the streets, highways, roads, and public places; to regulate the opening of street surfaces, the laying of gas or water mains, the building and repairing of sewers, and erecting gas-lights; to regulate the numbering of the houses and lots in the streets and avenues, and the naming of the streets, avenues, and public places; to regulate and prevent the throwing or depositing of ashes, offal, dirt, or garbage in the streets; to regulate the cleaning of the streets, sidewalks, and gutters, and removing ice, hail, and snow from them; to regulate the use of the streets and sidewalks for signs, sign-posts, awnings, awning-posts, and horse-troughs; to provide for and regulate street pavements, cross-walks, curb-stones, gutter-stones, and sidewalks; to regulate public cries, advertising noises, and ringing bells in the streets; in regard to the relation between all the officers and employés of the corporation, in respect to each other, the corporation and the people; in relation to street beg-

gars, vagrants, and mendicants; in relation to the use of guns, pistols, fire-arms, fire-crackers, fire-works, and detonating works of all descriptions within the city; in relation to intoxication, fighting, and quarrelling in the streets; in relation to places of amusement; in relation to exhibiting or carrying banners, placards, or flags in or across the streets or from houses; in relation to the exhibition of advertisements or hand-bills along the streets; in relation to the construction, repairs, and use of vaults, cisterns, areas, hydrants, pumps, and sewers; in relation to partition fences and walls; in relation to the construction, repair, care, and use of markets; in relation to the licensing and business of public cartmen, truckmen, hackmen, cabmen, expressmen, boatmen, pawnbrokers, junk dealers, hawkers, peddlars, and venders; in relation to the inspection, weighing, and measuring of fire-wood, coal, hay and straw, and the cartage of the same; in relation to the mode and manner of suing for, collecting, and disposing of the penalties provided for a violation of all ordinances; and for carrying into effect and enforcing any of the powers, privileges, and rights at any time granted and bestowed upon or possessed by the said corporation."

It will at once be seen that these are all matters of local concern and should be under local control only. To believe that the State government could properly assume to regulate such affairs, would show

an ignorance of the proper functions of the two classes of governments, State and local. And yet New York City, in many important particulars, does not enjoy local self-government. On one pretext or another the State Legislature has assumed powers which it cannot perform efficiently, or as efficiently as a properly constituted city government would. And this interference on the part of the Legisture has become a crying evil, and is an outcome of special Legislation. Thus in New York City the powers and duties of the city officials are varied at will by the State Legislature, and their salaries fixed and altered at pleasure. If an additional free bath is needed, or a new street is to be opened, permission must first be secured from the State Legisture. The city cannot borrow a dollar, levy a local tax,[1] or loan its credit for a public work, if every citizen desired it, except by permission of the Legislature; and yet the Legislature has the power to impose any debt, to direct the erection of any public work, and to compel the city to issue its bonds to pay for it, although every man in the city were against it.

There are thus two evils to be guarded against in organizing city governments. That some control over it by the State Legislature is necessary, can not be denied; but in this State at least, and especially with respect to New York City, the Legislature interferes too much in the regulation of what is

[1] All mention of taxation is here omitted, as it will be fully treated in the second part, when the powers of government are considered.

purely of a local character. The remedy that is proposed for this condition of things, is to restrict the powers of the State Legislature, by preventing it from tinkering with city charters through special legislation. There is no reason why all the cities in the State should not be organized under a general law, such as is in force in many of the States; and if special privileges or regulations are required, let it be done at the instance of a majority of the inhabitants of the city,[1] who are the best judges of their own interests.

The form such a restriction would take is embodied in an amendment to the State Constitution, which has twice been proposed in this State, but has never reached the people. "It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting bills, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations, by the passage of general laws only, applicable alike to all incorporated cities; and the Legislature shall not pass any special or local bill affecting the local or municipal government of a city, nor any general bill providing for the organization of cities under local or municipal governments other than republican in form; nor

[1] By a majority of the inhabitants is here meant a majority of those who have a real interest in the government of the city, and who would naturally be those who owned property in the city.

shall the Legislature provide for the filling of any municipal office now existing or hereafter to be created, otherwise than by popular election or by appointment of the mayor with or without confirmation of the highest Legislative branch of the municipal government; except that clerks and subordinates of departments may be appointed by the heads of such departments. The people of every city shall have power to organize their own local and municipal government and to administer the same for local and municipal purposes, subject only to such general laws as the Legislature may enact, provided such local government shall be republican in form. No city shall increase its permanent debt or raise the rate of taxation above that prevailing at the time of the adoption of this amendment, or undertake new public works, or direct public funds into new channels of expenditure, or issue its bonds other than revenue bonds, until the act authorizing the same shall have been published for at least three months, and thereafter submitted to the people of the city at a general election, and have received a majority of all the votes cast for and against it at such election."

CHAPTER III.

THE ELECTORATE.

As all the public business is transacted by certain agents who act for the people, the latter are directly engaged in the appointment of these agents or officers. In some cases, also, the people are called upon to take a direct part in legislation, as, for instance, in the case of an amendment to the State constitution, when the question of its acceptance or rejection must be submitted to and passed upon by the people. The right of expressing their wish in such cases is known as the right of suffrage, and in its exercise each individual acts for himself; and it is the largest aggregate of individual opinions tending in one way that forms a majority of the people, and, under the present system in this country, decides the question. It should be remembered that all the forms and processes by which the exercise of the suffrage is surrounded, are to secure an honest and unbiased opinion from each one who casts a vote, without the mediation of any representative. Acting, then, for himself, each voter is responsible for the use he makes of this right of suffrage, the

most important duty of a citizen. By this means not only does he appoint the agents to carry out State action, but he may also call to account those who do not properly perform the public duties which are imposed on them by virtue of their office. If the representative has not proved true to his trust, or if the elected officer of the State has abused the powers entrusted to him, it is by electing a new representative or officer that the people may express their disapprobation. If it is sought to insert into the State constitution a provision that is hostile to the general good, the people, by their vote, may prevent such an abuse of legislative power. The efficiency and excellence of the government depend upon the character of the officials who are delegated to exercise its functions, and in the appointment of these officers the citizen exercises the highest privilege that belongs to him, and one that distinguishes him from a mere subject by permitting him to take part in the government. Much, then, depends upon the proper organization and the intelligent exercise of this right of suffrage.

Qualifications of Electors.

The right of suffrage is defined and controlled by the State itself, and the only limitation on the action of the States by the Federal government is contained in the XVth Amendment to the Constitution, that "the right of citizens of the United States

to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Each State may, subject to this limitation, determine the qualifications of its voters, for the Constitution of the United States has not conferred the right of suffrage upon any one, and the United States has no voters of its own. In the case of Representatives and Presidential electors, which are the only Federal officers chosen by popular vote, the qualifications of the electors are determined by the local or State law. The electors for Representatives in each State "shall have the qualifications required for electors of the most numerous branch of the State Legislature"; and each State shall appoint Presidential electors "in such manner as the Legislature thereof may direct."

Where the qualifications of electors are defined by the State constitution, no additional qualifications can be required by the State Legislature; this, however, does not prevent the passage of such measures as are necessary to give effect to the constitutional provisions. But if the Constitution should require of the voter a certain age, or residence, and the Legislature should pass a law requiring a property qualification, it would exceed its powers and the law would be unconstitutional.

As the qualifications of electors are determined by each State for itself, there are no uniform or gen-

eral rules common to all. The following are, however, required by all the States :—citizenship, either by birth or naturalization; residence for a given period in State or voting district; and a certain age (21 years). The period of residence required varies greatly among the States, and such a qualification is demanded not only for the State, but for the county, township or district. Thus in Pennsylvania the elector must have resided in the State for one year, and in the election district where he offers to vote, at least two months immediately preceding the election. And it follows from this that the party must be a resident within the district where he votes; that is, if a State officer is to be elected the voter must be a resident of the State; and if a county, city, or township officer, he must reside within such county, city, or township. The object of this provision is to prevent fraudulent voting, as it compels a man to cast his vote where he is known, and it prevents the moving of large bodies of voters from one district to another just before an election in order to carry a doubtful district, as was the case before restrictions were laid on the practice.

There are other qualifications of a special nature required by some of the States, such as the payment of taxes (Pa.), ability to read (Conn. and Mass.), a proper registration, etc. Formerly the number of such requirements was large, and included such as a property qualification, militia ser-

vice, *white* color, etc., etc., but the tendency is to simplify the list, and reduce it to as small a number as will be consistent with the purity of elections.

Not only are qualifications defined, but certain classes of the community are for reasons of public policy, temporarily or permanently debarred from the right of suffrage. Universal suffrage does not, and never has existed. Thus infants, idiots, and lunatics are excluded because they are incapable of exercising the right of suffrage intelligently. But when an infant becomes of age, or a lunatic regains his full reason, the cause of the exclusion no longer exists, and they are then entitled to the full privileges of citizenship. Idiots and lunatics are expressly excluded from the right to vote by the constitutions of Delaware, Iowa, Kansas, Maryland, Minnesota, Nevada, New Jersey, Ohio, Oregon, Rhode Island, West Virginia, and Wisconsin. The exclusion of paupers rests upon a very different reason, for there is no lack of intelligence. A pauper is dependent upon the bounty of the State for his subsistence; and as he does nothing for the community, but is on the other hand a burden and a charge to it, he is very properly excluded from a share in the government. This has been called a harsh and cruel doctrine, and has but slowly been adopted among the States. Thus there was a time when the inmates of public almshouses were allowed to leave the institution on the day of election and cast their votes. And

in 1842–6 the almshouses formed an important factor in the politics of the State of New York, for the paupers were sent out to vote by the party in power, and were threatened with a loss of support unless they voted as directed, and the number was such as to turn the scale in the districts in which they voted. This abuse of power was too flagrant to be long endured, and it is now impossible. Paupers are excluded in New York, California, Louisiana, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, and West Virginia. Persons under guardianship are excluded in Kansas, Maine, Massachusetts, Minnesota and Wisconsin.

The exclusion of women from the right of suffrage is general, it being limited in nearly all the States to *male* citizens. And in so doing it has been decided that no violence has been done to the XIVth Amendment to the Federal Constitution, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." In New Jersey it would appear that women were at one time allowed to vote. The constitution of that State, framed in 1776, permitted all inhabitants of a certain age, residence, and property to vote. And in an act to regulate elections, passed in 1793, occurs a provision that "every voter shall openly, and in full view, deposit his or *her* ballot, which shall be a single written ticket containing the names of the persons for whom

he or *she* votes." This privilege was abolished in 1807, and it does not appear that any other State ever allowed it. Of the justice and expediency of this exclusion this is no place to speak.[1]

Having thus determined what qualifications are required of the voter, and what classes of the community are denied the right of voting, the manner of electing officers must be considered. This process is made up of two series of acts, the one series leading up to the nomination of the officer, by which he is proposed to the voters for the office to be filled, and the other series leading up to the election, or his acceptance or rejection by the voters. These two series of acts are distinguished in this particular, that while the nomination of officers is not regulated and controlled by legislation, being planned and performed by political parties as voluntary acts, without any sanction of law, the election, or second series, is a matter for government interference, and every step is clearly defined by law. Moreover, the series of acts which result in the nomination is performed as many different times as there are political parties in the field. Thus, if only the more important parties are considered, the Republican and the Democratic, each one must offer a nominee or candidate for the office to be filled, and, therefore each one must separately perform all the preliminaries neces-

[1] In the city of Boston women may vote for member of school committees, if they possess the requisite qualifications. In many cities they may serve on the local boards, such as those of charities, education, etc., etc.

sary to make such a nomination. An election, however, is but a single act, and merely decides among the candidates named by the various parties for the office; it is performed but once, and is subject to regulation by the government and not by political parties.

The Nominations.

All nominations are made by the qualified voters acting directly in caucus or primary meeting, or indirectly through delegates in conventions. It is taken for granted that the people are desirous of filling the offices of State with men who are capable of performing the duties that belong to those offices, faithfully and honestly. What are the means by which such persons may be agreed upon? In every political division of the country there are members of at least two different parties, having different ideas on government and the manner in which it should be conducted, and between which there is a contest for the possession of the government, a contest which is, however, carried on by legal methods, and is decided by the will of the majority of the voters in a district. Moreover, as each party has some organization by which its action may be guided, and a well-defined policy, in casting their votes for the candidates for office the voters are really determining the policy by which the affairs of government should be performed, because the candidate is sup-

posed to represent and embody, as it were, such a policy. It may occur, and in fact often does occur, that a party may present its candidates with no definite principles for support, and in such cases the contest degenerates into a mere scramble for office, and this evil is more common in local governments, where the leading questions are considered of minor importance, and enlist to a less degree the interest of the people than do the State and Federal questions.

The organization of parties extends to the smallest political division of the country.[1] When an office is to be filled, or when a political contest is about to be held a call is issued to the members of one political party in the election district to meet at a specified time and place for the purpose of nominating candidates or choosing delegates to conventions. This implies some organization, for the voters in the party must be known, although the mere statement of a person who attends such a meeting that he is a member of the party, is accepted. And the need of such organization becomes the greater in proportion to the populousness of a district. Thus in a rural

[1] "Party organizations and machinery consist of national, State, county, city, ward, and township committees, and committees for each congressional district for each political party and township, ward, and city meetings, county, State, district and national conventions for making nominations, discussing political questions, adopting resolutions, party creeds, and platforms, and appointing committees for the succeeding year or term. The committees call the meeting and conventions, provide for holding them, procure and disseminate documents, addresses, political tracts, and other information among the people; procure and distribute tickets at the polls, and do various other things to obtain votes and carry elections, some of which honest men will do, and some of which they will not do."—Seaman's "American System of Government."

population the voters know one another and in general know the political standing of each inhabitant of a district. But in a city the opportunity for fraud and deception is greatly increased because such knowledge is impossible; and this has necessitated a more complete organization of party forces. Thus a city is divided into a large number of voting districts, and in each district exists an association of the party. A meeting of such an association is known as a "caucus" or primary meeting, and has become an indispensable adjunct to party government. In rural districts the caucus is nothing but the town meeting called together for political and not administrative purposes. Such a call is posted in some conspicuous position in the town, before the store or at the cross-roads, but the local newspapers have now become the most effective means of making known such a meeting.

In the cities the caucus is called together by regularly appointed committees, for otherwise any number of such meetings could be convened by irresponsible persons, each one claiming to be the "regular" caucus, and thus endless confusion would result. The members of the committees thus appointed hold from year to year, and as they are frequently reappointed, they come naturally into some special knowledge of the politics and politicians of their districts and are apt to obtain an undue political influence and control of the political mechanism.

When assembled, the meeting is conducted according to such rules as govern the proceedings of a Legislature; a presiding officer and a Secretary are chosen, and the objects of the meeting are stated. Those present at the meeting are on an equality, and under certain restrictions imposed by the rules, the object of which is to preserve order and protect the rights of the minority, and not to stifle debate, each one has the right to make a nomination, and to urge the merits of his nominee. If properly seconded, or supported, these nominations are acted upon, the vote upon each nomination being *viva voce*. As soon as the necessary business is completed the meeting adjourns without day, and it only remains for the Secretary to give to each delegate his credentials to the convention for which he was chosen, and the credentials are in the form of a letter stating the fact of his election.

Simple as is this procedure it forms the very basis of our political system. The citizen here exercises his highest prerogative, and determines what person shall represent him in the Legislature, and what officers shall as his representatives perform the wishes of the Legislature, or shall attend to such matters which are more properly performed by the government. It is here, moreover, that the individual citizen can exert the greatest pressure, and it is when scheming and unscrupulous demagogues have gained possession of and have controlled the primaries, that

the greatest instances of misgovernment have resulted. By open debate the general standing and merits of the candidates proposed can be thoroughly canvassed, and a fit and proper nomination result. But when this source of political action is corrupted, and in place of originating action it is used to favor the purposes of political "bosses," then the primary becomes merely a form for registering the edicts of party leaders, so that it has sometimes been said that a nomination in caucus is equivalent to an election.[1]

The action of the nominating convention differs but little from that of the primary, save in the fact that it is composed of members regularly elected in the various districts according to the forms laid down for regulating such elections. Instead of acting directly, as in the caucus, the people act indirectly through delegates. The convention, then, bears the same relation to the primary as the Legislature (State) does to the town meeting. A State convention is composed of delegates chosen in each of the minor political division of the States, and nominates State officers, and, at stated intervals, Presidential electors. The National convention is composed of delegates from each State, and meets to nominate the President and Vice-President of the United States. These conventions, State and Na-

[1] For the practical action of the caucus and the manner in which it is used in New York City see an article by Mr. F. W. Whitredge in vol. i of "Cyclopædia of Political Science."

tional, are governed by the rules which govern legislative assemblies, and they differ little from them save in the object for which they are assembled. These meetings and conventions are merely parts of party organization, and as such are under party management, and are not generally recognized or regulated by law.[1]

Nor does party action end with the nomination of the candidates. The various committees are actively engaged throughout the election in pushing their candidate and urging upon the people the issues he represents. Political documents are circulated, the party leaders "stump" for the party candidate, ballots and posters are prepared and printed, and means for bringing the sick or infirm to the polls or voting-places, are provided. Every means are adopted for favoring their candidate and discrediting his opponent. Nor are such proceedings confined to legitimate modes of action; but bribery, buying

[1] In some States the protection of the law has been extended to the primary meetings with a view of diminishing fraud and undue influence. Thus, a law of Ohio provides for the calling together of a caucus and the manner in which notice of such meeting is to be given; and a like law is in force in Missouri and California. In New York, as an experiment, the law regulates certain parts of the proceedings of the caucus in the city of Brooklyn. "The principles of public policy which forbid and make void all contracts tending to the corrupting of elections held under an authority of law, apply equally to what are called primary or nominating elections, or conventions, although these are mere voluntary proceedings of the voters of certain political parties. It is quite as much against public policy to permit contracts to be made for the purpose of corrupting a convention or primary election, as to permit the same thing to be done to corrupt voters at a regular election. The buying or selling of votes, or of influence, at a nominating convention or election is quite as abhorrent to the law as the same corrupt practices when employed to influence an election provided for by statute."—McCrary, "Law of Elections," § 192.

of votes, the free use of money and of liquor,[1] and other means too numerous to be mentioned, are freely employed, with a view of influencing the result of the election. All of these expedients, as well as others which pertain more directly to the machinery of elections, such as ballot-stuffing and fraudulent returns, are committed under party management, and the parties are alone responsible for such abuses of the elective franchise.

The Election.

The time, places, and manner of holding elections are regulated by provisions in the State Constitution, or by legislative enactment, and this is true not only in the case of state and local elections but also in that of national elective officers. But Congress has power to make or alter such regulations in the case of senators and representatives (save as to the places of electing senators who must of necessity be chosen at the seat of government in the state) when it deems such interference necessary to the public good. Thus, before the year 1866, each state elected its senators as it pleased; some by a separate vote in each house of the state legislature, and others by both houses meeting and voting in one body. But in that year a uniform rule was imposed by Congress on the states, by the act approved July 25. "The legislature of each state which shall be chosen next

[1] In some States, by law, all liquor stores must be closed on election day.

preceding the expiration of the time for which any senator was elected to represent said state in Congress shall, on the second Tuesday after the meeting and organization thereof proceed to elect a senator in Congress. Such election shall be conducted in the following manner: Each house shall openly, by a *viva-voce* vote of each member present name one person for senator in Congress from such state, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each house, shall be entered on the journal of that house by the clerk or secretary thereof; or if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to be taken as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person has received a majority of the votes in each house, he shall be declared duly elected senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose by a *viva-voce* vote of each member present, a person for senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting,

shall be declared duly elected. If no person receives such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature, and shall take at least one vote, until a senator is elected."

In the election of Representatives, also, Congress has interfered and availed itself of the power granted to it. In many states before 1842, representatives to Congress were elected on a general ticket to be voted upon by the people of the state at large; but by an act of 1842, Congress prescribed that where a state was entitled to more than one representative, they should be elected by *districts* composed of contiguous territory, thus requiring the state to divide its territory into as many districts as it had representatives in Congress, each district being entitled to elect one such representative. By further acts which extend from 1848 to 1875, Congress has determined that the election shall be by ballot, and not *viva-voce* as was sometimes done; and that unless the state constitution fixes a time for the election, it shall be held in each state on the Tuesday after the first Monday in November. This is the extent to which Congress has legislated on the subject of the time, places, and manner of conducting elections, but these regulations apply only in the election of Federal legislative officers, and do not hold good in the election of state or local officers. But apart from

these regulations the same machinery of election is used in electing both state and federal officers.

The essential steps in an election are somewhat as follows: The Secretary of State issues to the sheriff, clerk, or county judge in each county a notice specifying the officers to be chosen at the next general election. The sheriff or other officer receiving the notice transmits a copy of it to the supervisor or one of the assessors in each town or ward of his county, and these officers, together with the town-clerk in the several towns, and the common council in cities, designate the places for holding the elections, such places being known as polls. The polls are open from sunrise to sunset, and are under the charge of inspectors in each district, who are chosen from both parties,[1] and whose duty it is to count the number of ballots cast and make a return of such ballots to the supervisors for each district. The board of supervisors or assessors makes up the return for the county by combining those received from the districts, and transmits the same to the county clerk who also files a list with the Secretary of State. A board of state officers, consisting of the Secretary of State, the comptroller, state engineer, attorney general and treasurer, examines the statements of the county clerks, and from the results of

[1] "The officers of election are chosen of necessity from among all classes of the people; they are numbered in every state by thousands; they are often men unaccustomed to the formalities of legal proceedings. Omissions and mistakes in the discharge of their ministerial duties are almost inevitable." Report on contested election case, Blair vs Barrett, 1870.

such examination declares what officers are elected. The Secretary of State then sends the proper notification to the persons chosen. In order to give greater publicity to the various steps just described, notices of them are from time to time published in the newspapers throughout the state.

Such a description, however, gives but a very imperfect idea of the immense amount of detail incident to an election, nearly all of which is subject to regulation by state laws. And with a view to giving in outline the essential points of such regulations, an election will be described more in detail; but it should be understood that such details are not uniformly demanded in all the states, and hardly two of them have an election system alike in every particular. Only the more important points are here given and illustrated, and these may be considered under the following heads: Registration, election or balloting, canvassing, and return of votes.

Registration.—In order to prevent the overcrowding of polling places, by which delay may occur, voters may be excluded from voting by lack of time, and fraud and intimidation ensue from the polls being filled with the men of one party who will endeavor to throw every obstacle in the way of the voters of the opposing party, a populous district, city or county, is divided into a number of voting precincts, each precinct containing a small number of voters as compared with the population of the district or

city. Thus the city of New York is divided into voting precincts which contain about two hundred and fifty voters each. Furthermore each voter in the precinct is required to register, that is, he must present himself in person on certain appointed days before officers chosen for the purpose, and enroll his name, and state such other facts as to his time of residence in the precinct, county and state, his naturalization if a foreign born citizen, etc., which may be required of him. Whoever neglects thus to be enrolled, cannot vote at the election, and any person applying to be registered may be challenged by a qualified voter, when the inspectors examine into the qualifications of the challenged voter and determine if he may be allowed to vote. When completed, the register is subject to revision, because there may be some voters enrolled who are under fictitious names, or who are non-residents, or who are personating absent or deceased persons, all of which has been frequently practiced.

It will be seen that the necessity for small voting districts and a complete registration apply to the populous districts rather than to those where the population is small and scattered. In the latter the inspectors of elections are competent to decide who are and who are not entitled to vote. But in a city the machinery of registration is needed, and its introduction has tended to diminish in a great degree a number of illicit practices, such as the transfer

of large bodies of voters from one district to another, ballot stuffing and repeating, or voting more than once. There is a new list made out on appointed days once a year to be used in general elections, but for other elections a revision of the general registration is found to be sufficient. In States where the payment of a poll or other tax, or a property qualification, is required of the voter, there is no need of a special registry, for these lists may be used for the same purpose.

Election or Balloting.

At general elections all voting is conducted by ballot.[1] "A ballot may be defined to be a piece of paper, or other suitable material, with the name written or printed upon it of the person voted for; and where the suffrages are given in this form, each of the electors in person deposits such a vote in the box or other receptacle provided for the purpose, and kept by the proper officers."[2] The intention of the ballot is to insure secrecy,[3] and thus to prevent

[1] In Kentucky alone is the old system of voting *viva voce* still maintained. Art. viii, § 15 of her constitution, reads :—"In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the votes shall be personally and publicly given *viva voce : Provided*, that dumb persons entitled to suffrage, may vote by ballot." In Congressional elections, however, this section is controlled by the Act of Congress requiring all votes for representatives in Congress to be printed or written ballots. In many of the States the Legislatures vote *viva voce*.

[2] Cushing's "Legislative Assembly," p. 103.

[3] It would appear that certain provisions which are found in the State Constitutions are framed against the secrecy of the ballot. Thus in that of Penn. occurs the provision that "every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the

those influences tending to overbear and intimidate the voter when it is known how he votes. And to secure this secrecy minute regulations by statute as to the form and quality of the ballot have been ordained. Thus in some States it has been thought sufficient to provide that all ballots shall be printed or written on plain white paper "without any mark or designation being placed thereon whereby the same may be known or designated,"[1] and under this provision ballots printed on colored paper have been rejected. Not only would there be a temptation to influence voters, if different ballots were allowed, but there would exist a stronger temptation to abuse the knowledge which such a difference

election officers on the list of voters, opposite the name of the elector who presents the ballot. * * * The election officers shall be sworn or affirmed not to disclose how any elector shall have voted unless required to do so as witnesses in a judicial proceeding." In Illinois the constitution provided that "all elections by the people shall be by ballot"; and a statute which required the inspectors to number each ballot as is required in the Constitution of Penn. as just described, was declared unconstitutional and void. But the better opinion is to preserve the secrecy of the ballot inviolate. Thus Judge Cooley in his work on "Constitutional Limitations" says: "The system of ballot voting rests upon the idea that every elector is to be entirely at liberty to vote for whom he pleases and with what party he pleases, and that no one is to have the right, or be in position, to question him for it, either then or at any subsequent time. The courts have held that a voter, even in case of a contested election, cannot be compelled to disclose for whom he voted; and for the same reason we think others who may accidentally, or by trick or artifice, have acquired knowledge on the subject, should not be allowed to testify to such knowledge, or to give any information in the courts upon the subject. Public policy requires that the veil of secrecy should be impenetrable; unless the voter himself voluntarily determines to lift it; his ballot is absolutely privileged; and to allow evidence of its contents, when he has not waived the privilege, is to encourage trickery and fraud, and would in effect establish this remarkable anomaly, that, while the law from notions of public policy establishes the secret ballot with a view to conceal the elector's action, it at the same time encourages a system of espionage, by means of which the veil of secrecy may be penetrated and the voter's action disclosed to the public" (p. 605).

[1] Oregon, § 30, p. 572 of code.

would give, when the canvass of votes was made. In Massachusetts no tickets are to be printed or distributed when there are three or more candidates to be voted for "unless such ballots are of plain white paper, in weight not less than that of ordinary printing paper, and are not more than five nor less than four and one-half inches in width; and not more than twelve and one half, nor less than eleven and one half inches in length, and unless the same are printed with black ink on one side of the paper only, and contain no printing, engraving, device, or mark of any kind upon the back thereof. The names of the candidates shall be printed at right angles with the length of the ballot in capital letters not less than one eighth nor more than one fourth of an inch in height, and no name of any person appearing upon any ballot as a candidate for any office shall be repeated thereon with respect to the same office.'

Yet notwithstanding such regulations, there are errors in balloting which may be overlooked, when there is no indication of an attempt at fraud, although under a strict construction of the law they should be rejected. Thus errors of spelling, or the use of abbreviations, when they do not involve a doubt as to the intent of the voter, will be received; nor will the omission of the word junior after a name make the ballot void. But the power of receiving such votes is open to grave abuses, and should be allowed

and exercised with great caution. In a recent decision by the Supreme Court of California it was laid down that "as to those things over which the voter has control, the law is mandatory, and that as to such things as are not under his control, it should be held to be directory only." And the court concluded "that a ballot cast by an elector in good faith, should not be rejected for failure to comply with the law in matters over which the elector had no control; such as the exact size of the ticket, the precise kind of paper, or the particular character of type or heading used. But if the elector wilfully neglects to comply with requirements over which he has control, such as seeing that the ballot when delivered to the election officers, is not so marked that it may be identified, the ballot should be rejected."[1] The intention of the voter is the guiding principle in such matters.

When more than one officer is to be elected, separate ballots may be used, and different receptacles or ballot-boxes for the ballots for the offices or set of officers may be required. Thus in elections held in the city and county of New York there are at general elections no less than seven of such boxes; marked respectively, President, General (for ballots cast for all officers in whose election all the voters of the city and county alike participate), Congress, Senator (State), Assembly, City (Aldermen) and

[1] Kirk *vs.* Rhoades, 46 Cal., 398.

Justices (of the district court). In case of special questions submitted to the people at a general election, such as a constitutional amendment, other boxes may be added. This is to facilitate the counting of the votes.

In New York city the elections are under the supervision of the Board of Police, which establishes a Bureau of Elections, appoints the chief of that Bureau, divides the city into voting precincts, and designates the places of registry and voting; it appoints all inspectors of elections, there being four in each election district (two of whom, on State issues, shall be of different political faith and opinions from their associates) and poll clerks, whose duties are of a clerical nature, such as making out registration lists, assisting in the canvass, etc., etc., of which there are two in each district, and they must be of different political faith on State issues. The inspectors of elections revise the registry list, preserve order at the polls, suppress riots, and protect voters and challengers[1]; and canvass or count the vote. And in every election district there are at least two inspectors, overseers or managers of election, who are chosen either directly by the people or by certain officers to whom the power is given. In New York city the inspectors are appointed by the Board of Police;

[1] Each political party has the right to be represented at each place of registration, revision of registration and voting, by a challenger who stands near the inspectors, and challenges voters whom he suspects of fraudulent voting, when the matter is examined by the inspectors, and the vote accepted or rejected.

but the constitution of Pennsylvania provides that in every district there shall be a board of elections consisting of a judge and two inspectors, chosen annually by the people; and as a further precaution, "the courts of common pleas of the several counties of the commonwealth shall have power within their respective jurisdictions, to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required, such appointments to be made for any district in a city or county upon petition of five citizens, setting forth that such appointment is a reasonable precaution to secure the purity and fairness of elections." These overseers must possess certain qualifications, and, there being two for each election district, must belong to different political parties. And a like protection is afforded by the United States election law, but the number of petitioners must, in that case, be ten.[1]

In no State are the purity of elections and the freedom of electors not guaranteed by statute, but these provisions are not uniform, although they all

[1] "Several of the States have recognized the importance of providing for the presence with the election officers of witnesses representing the parties to the contest. * * * For example, the law of Alabama provides for the presence of five of each party; that of Florida provides for the presence of one representative of each political party that has nominated candidates; that of Illinois, for the presence of two legal voters of each party to the contest; those of Kansas and Oregon permit the presence of the candidates in person, or of not exceeding three of their friends. Similar statutes are to be found in Pennsylvania and Virginia. The very important requirement that the board of election officers should be composed of members of different political parties is omitted from the statutes of twenty-two states."—McCrary, "On Elections," § 570–1.

aim at the same object. The elector is privileged from arrest during his attendance on elections, except for treason, felony or breach of the peace. He is protected from undue and corrupt influences. Thus in Pennsylvania, any person who shall give, or promise, or offer to give, to an elector, any money rewards or other valuable consideration, for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such elector's vote, and any elector who shall take or receive any reward or consideration for his vote, shall forfeit the right to vote at such election; and although such laws do not, and cannot wholly do away with corrupt practices at elections, they tend to diminish fraud.

The Canvass.—But all these precautions against fraud will not secure honest elections, unless further precautions are taken to protect the counting of the ballots cast; and at this stage of an election fraud may be, and continually is perpetrated, despite of all legal restraints. The counting or canvassing is performed by the inspectors of elections, who are of different political faith and opinions, and it is generally done immediately after the close of the election, and in the very room where the election was held. This is to prevent any tampering with the ballot-boxes, either by withdrawing some of the ballots cast, or by putting in such as could not have been voted under forms of law. In Mississippi, a

State that is notorious for its election frauds, if the canvass is not finished by midnight of the day of the election, it may be completed the next day; and in South Carolina three days are allowed to the managers in which to deliver to the commissioners of election the poll-list, and the boxes containing the ballots; and, as if to favor fraud and tampering with the boxes, it is provided that these commissioners of election shall meet *at the county seat*, nearly a week after the election, and proceed to count the votes of the county.

Where registration or a poll-list is employed, a canvass consists in comparing the number of ballots found in the box with the number of actual voters on the list, and in case there are found more ballots in the box than can be accounted for by the lists, such excess shall be drawn from the box and destroyed before an examination of the ballots is made. If the election is a local one, the inspectors merely count the number of votes and declare the result. But if it is a county or State election, they must make a written return of the number of votes cast in their district to higher canvassing boards, which in turn also prepare returns for the political divisions under their charge, to be forwarded to still other boards, as has already been described. The State Canvassing Board is the highest of these various boards, and declares the final result.

It is a well established rule that the duties of canvassing boards are purely ministerial, no judicial functions adhering to them. Their duty is one of arithmetic only, to count the number of votes and issue a certificate to the candidate receiving the highest number. They cannot reject what is, on its face, a correct return, and they cannot go behind the returns for any purpose; not even to correct the errors and mistakes of any officer that preceded them in the performance of any duty connected with the election. They have no discretion to hear and take proof of frauds, "even if morally certain that monstrous frauds have been perpetrated. The canvassing officers are to add up and certify by calculation the number of votes given for any office." [1] In some of the Southern States, such as Texas, Alabama, Louisiana, and Florida, the Legislature has expressly conferred by statute upon the board of canvassing officers the power to revise the returns of an election, to take proof and in their discretion to reject such votes as they deem illegal. But this is a power that is open to grave abuses, and has never been adopted by other states. "If canvassers refuse or neglect to perform their duty, they may be compelled by mandamus; though as these boards are created for a single purpose only, and are dissolved by an adjournment without day, it would seem that, after such adjournment, mandamus would be inap-

[1] Att'y Gen'l *vs.* Barstow. 4 Wiscon., 749.

plicable, inasmuch as there is no longer any board which can act; and the board themselves, having once performed and fully completed their duty, have no power afterward to reconsider their determination and come to a different conclusion."[1]

In the event of a contested election, in which two or more persons claim to have been legally elected, and therefore entitled to an office, ample provision is made for a proper solution of the subject. Where the election is to a legislative office, the final decision rests with the legislative body; in other cases the proper courts must decide, "It matters not how high and important the office, an election to it is only made by the candidate receiving the requisite plurality of the legal votes cast; and if any one without having received such plurality, intrudes into an office whether with or without a certificate of election, the courts have jurisdiction to oust, as well as to punish him for such intrusion."[2]

A majority or plurality of votes, nowever small, decides the election, and it thus happens in a closely contested election that a portion of the community, the minority, however large, has no representative of its wishes, and is to that extent, without representation. Thus it may happen that in a district there are 500 Republicans and 550 Democrats; in this case, the Democrats, by a solid vote will be able to fill all the offices at their com-

[1] Cooley, "Consti. Limitations," p. 623.
[2] Cooley, "Consti. Limitations," p. 624.

mand with their candidates, and the Republicans, who are nearly equal in numbers, will be unrepresented in the Government. The glaring injustice of this manner of deciding elections has led to many schemes of minority representation, by which this minority may, under certain conditions, be enabled to elect some of its candidates in the face of an opposing majority.

Of the theory of minority representation we can say nothing. The division of the States into districts, and of the districts into minor subdivisions, does produce a form of minority representation, for nothing is more common than for an officer to be elected in a State or district which is, on a general vote, opposed to him in politics. It has well been said that the majority rule if carried out relentlessly in the election of representatives, would obliterate all election district lines, and lead to a general vote of the whole body of the people for the whole Legislative Assembly; which would then be composed of members belonging to one party. But this division into districts does not give any real relief to the minority from the disadvantages under which it labors, and other more complicated systems have been tried. Two of these forms have been adopted in certain elections in this country, viz.: the limited vote, and the cumulative vote.

Under the limited vote each elector is allowed to vote for a fixed number of persons less than the whole number to be elected. Thus in New York

County two members of the board of supervisors are elected each year. The law governing this election provides that no person shall vote for more than one candidate; the candidate receiving the highest number of votes was elected, and as the plan was formed to divide representation between the two parties, the next highest candidate was appointed a supervisor.[1] For many years the plan worked well, the Democrats electing a supervisor, and the Republicans being entitled to the appointment of another; but as the Democrats outnumbered the Republicans by more than two to one, the party leaders arranged it so that the Democrats in certain wards should vote for A, and those in others for B. Under this arrangement A and B were elected, and the Republican candidate was left out altogether. A like plan of electing aldermen in New York City has just been abolished, and a return to the old system of electing one alderman in each district made. In this case, six aldermen were elected at large, each voter however, being allowed to vote only for four; and three aldermen were elected in each aldermanic district, but a voter could only cast his ballot for two candidates. By an amendment to the New York constitution adopted in 1869 the limited vote was applied to the election of the judges of the court of appeals. The court was composed of a chief judge and six associate judges; but "at the first election of judges

[1] Passed April 15, 1857; and modified by act passed April 17, 1858.

under this constitution, every elector may vote for the chief and only four of the associate judges." The system is used in many localities in the selection of supervisors and inspectors of elections.

Under the second, or cumulative vote, a certain number of votes are given to each elector to be distributed as he pleases. Thus the constitution of the State of Illinois, which adopted the system in 1870, so far as regards the election of representatives, provides for the division of the State into districts, each district to be entitled to three representatives. "In all the elections of representatives aforesaid each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, as he shall see fit; and the candidates highest in votes shall be declared elected" (Art. iv, § 7 and 8). Under this system the voters are permitted to give all three of their votes to one candidate—one to each of three, or two to one candidate, and the third to another, as he wishes. In this system by concentrating their votes on one candidate a minority may be reasonably certain of electing him. It has been adopted in certain classes of municipal elections in Pennsylvania.[1]

[1] This and other systems of minority representation are discussed in Bucklew's "Proportional Representation." He strongly favors the cumulative system. What is regarded as the best system, that proposed by Mr. Thomas Hare, in which each vote counts for only one of several persons on the ballot, although more than one are to be chosen, has never been introduced into this country. It has been ably defended by Mr. Mill against adverse criticisms, but it requires a higher standard of intelligence and political morality than exists at present. See Mill's "Representative Government."

CHAPTER IV.

OFFICES AND OFFICE-HOLDERS.

The number of officials who are charged with carrying into effect the action of government, a number that is necessarily very large under a system of national, state and local governments, in which representatives of all are to be met with in the minor political divisions, renders the mode of selecting these officials a most important, and at the same time a most complex question. Office is a trust, and is to be held only for the performance of the duties that have been assigned to it; and when an official employs his position to further his own or his party's aims, he abuses his trust, and should be made accountable for such abuse. How are the men most fitted for the place to be obtained? How may the best service be secured from them? and finally, what is very important, in what manner may they be held strictly responsible for their conduct in office, for even the best of officials must be accountable in some way for their actions? That none of these questions have been answered in a satisfactory manner by the existing system of ap-

pointing to office is shown very plainly by the open abuse of official position and influence, and by the widespread corruption of the civil service; and they promise to become ere long one of the most prominent questions in national and state politics. It will be well then to glance briefly at the existing system and to suggest the most important remedies for the evils prevalent in that system.

The more important offices are provided for in the constitutions, both state and national. Thus in the Federal constitution the manner of electing the president and vice-president are expressly stated, and also the manner of appointing judges[1]; their terms of office are indicated, and their general powers and duties defined. In like manner a State constitution contains like provisions respecting the more important of the State officers. In such cases the powers of the Legislature are restricted by the constitutional provisions, and no change may be made by statute in any thing that is thus expressly laid down. But the Legislature may pass such laws as are necessary to carry into effect the constitution, and here its powers end. With regard, however, to the vast number of minor offices, the majority of which is found in the executive department of government, the power of the Legislature is supreme. It may create the office, grant such powers as it

[1] There is some doubt as to whether members of Congress are properly "officers" or not, the question never having come before the Supreme Court for decision. For this reason all mention of Legislators as officers is omitted.

chooses, prescribe the manner of filling it, limit the term of service, and fix the salary of the incumbent, and place him under such restrictions and control as it sees fit.

In order to render the question of office as free as possible from outside complications, the executive department of government will first be dealt with, as that from its very functions demands a large number of officials, reaching into the smallest political division of the country, moving in direct contact with the people, and at the same demands a high degree of accountability, for the trusts are important and easily abused.

For these reasons to appoint all executive officials except the chief executive officer, is better calculated to secure an efficient service, than to elect by popular vote. Take for example the Federal government. There is the head of the executive department, the president, who very properly holds his office by popular vote, for in no other way could there be so little opportunity for fraud and intrigue. And for a like reason the vice-president, who is the possible president, is chosen in the same manner. The president appoints the heads of the various executive departments, who act under his guidance; he appoints many of the department officers; he appoints all revenue collectors, both of customs and of internal revenue; all postmasters whose salaries are above $1,000 a year; all diplomatic and commercial

agents (consuls and consular agents), who are the instruments of executive action in foreign countries, and many others. The appointment of many inferior officers is vested in the heads of the departments or such other executive officers as may be designated by Congress. But, as the chief, the president is responsible not only for his own acts, but also for the acts of those who hold office through his appointment or that of officers directly responsible to him. In the vast system of Federal executive it may be said that the president is responsible, directly or indirectly, for every part of its action, and for every one of the agents of that action. For this reason it is very proper that he should appoint to office the men who are intended to carry into effect his will. That the advice and consent of the Senate are required changes but little the theory of such a system of appointments ; for, as has been said, the Senate does not pass upon nominations as a legislative, but as an advisory body,—as a council of appointment. It is intended to serve as a check upon the action of the president, who might be led to abuse the power of patronage if he were not so restricted. No executive agent, save the President, should be held politically responsible to Congress. Such a provision would beget endless contention.

That the principle in force in the executive department of the Federal government is the only true one cannot be doubted, although it has been often

abused for party or personal reasons. Public appointments should be made on the sole authority of those to whom directly or indirectly the holder of the office is subordinate. And in respect to responsibility the Federal executive furnishes a model that is worthy of all imitation.

"The actual conduct of foreign negotiation, the preparatory plans of finance, the application and disbursements of public moneys in conformity to the general appropriations of the Legislature, the arrangement of the army and navy, the direction of the operations of war, these, and other matters of like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate, and on this account they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence."[1]

But when we pass from the Federal to the State executive, a very different system is found. Under the impression that election by the people only is in accordance with true democratic principles, one after another the chief executive officers have become elective. The governor is elective, and stands in the same relation to the State government as the

[1] Federalist, p. 502.

President does to the Federal government. Yet he possesses little power of appointing his subordinates, although in theory he is responsible for their actions. The chief executive officers of the State, who perform the administrative functions in the State that the Cabinet does in the nation, hold their offices by a popular election, or at the hands of the same power that raised the governor to his office. So that instead of being subordinated to his guidance, and accountable to him for their actions, which are performed while carrying into effect the governor's functions, distributed for convenience among a number of officers, they are his equals and independent of his control.

Moreover not only are they made independent officers, but by the manner of choosing them, they may be made politically opposed to the governor, and thus this system tends to destroy that unity of purpose and action that should be one of the chief characteristics of the executive. Thus the governor may belong to one political party and may be pledged to support a certain line of public policy; the secretary of State, or treasurer, or all the executive officers may belong to another party and pledged to carry into effect a totally different policy. And yet they cannot be brought under the control of the governor, and there is no way by which he may secure harmony in the administration, for the State constitution prescribes the manner of choosing

these officers, and by that constitution they are to be elected by the people. It is an evil when the Legislature and executive are not in accord; but the evil becomes greatly magnified when dissension occurs in one of the administrative departments.

In such a system where does the responsibility rest? Certainly not with the governor, for he has no voice in the selection of these officers. In place of one authority, there is the authority of many, and instead of one responsible head, the responsibility is divided, and we must hold the "people" or the "party" to account for selecting inefficient or corrupt officers. There is no real responsibility in this system.

Take another example of an office being made elective when all theory is against it. The sheriff is as much an agent of the State as distinguished from local action, as is a Federal internal revenue collector an agent of national as distinguished from State action. In either case to secure a higher efficiency of government, their action is confined to a limited territory. "That officer [the sheriff] is," says one of our clearest political writers,[1] "the lieutenant of the governor in a county. He is properly a part of the State, and not of the local or municipal administration. He is custodian of the peace of the county. It is his duty, on order of the governor,

[1] Charles Nordhoff, in *North American Review*, October, 1871. This essay will repay a careful study, and we have freely used Mr. Nordhoff's arguments and illustrations in this chapter, often using his very words.

or without if the case is urgent, to suppress unlawful assemblages, to quell riots and affrays, and to arrest and commit to jail if need be those engaged in the disturbance of the public order." Yet the appointment of this officer has in a majority of the States been taken from the governor, and he is elected by popular vote in each county, being thus in form a county, but in functions a State, officer. It is true that this incongruity is in some States lessened by limiting the sheriff to one term of office, or by prohibiting him from holding office for two successive terms.[1] For, to illustrate, let it be supposed that the sheriff is called upon to enforce in his county a measure to which the inhabitants of the county are hostile. Will he act with as much vigor when he knows that his remaining in office depends upon his ability to retain the good will of the electors of his county, than if he held his office independently of them? Or could he refrain from using his official position and influence to secure a re-election? These are questions which are only in part answered by limiting the term of office. That the system of electing sheriffs, and like officers, such as coroners and district attorneys, does weaken executive responsibility, is unquestioned; although the responsibility of the governor is very often recognized (as in New York State) by giving him power to remove such officers.

[1] In New York State, sheriffs shall be ineligible for the next three years after the termination of their offices.

But if the organization of the local and municipal governments is examined, the elective principle will be found to be in most cases more predominant than in the State government. In the township governments this evil is not great, because the interests at stake are neither many nor important, and where the town-meeting exists, the officers may be held to a strict account for their conduct of affairs. In town-meeting all officers of the local government are elected. But with respect to a city, where the problems of government are complex, and where even under the best devised administration there appears to be opportunity for fraud, the needs are of a very different nature. As the functions of a city government are almost wholly of an administrative nature, the highest degree of accountability would appear necessary. Moreover, it would also seem as if unity in action was also desirable, and for this, one ruling head is requisite. For these reasons, we would expect to find a city government modelled after the Federal executive, which secures both of these requisites. And in some cities this is nearly the case. Thus in Baltimore, the mayor nominates, and by and with the advice and consent of a convention of the two branches of the city council appoints all officers under the corporation, except the register of the city and the clerks employed by the city. By a very recent provision in the city charter, the mayor of Brooklyn (N. Y.), has the power of appointing the

successor of any commissioner or other head of department (except the department of finance and the department of audit), or of any assessor or member of the board of education of said city, when the terms of such officers shall expire.

In organizing a city government it has generally been feared that the mayor may be invested with too extensive powers, and that by centralizing too many powers in his hands, the opportunity for abuse will be greatly increased, while the power of remedying abuse will be decreased. Through this fear the mayor has been deprived of many powers which would rightly belong to him, and especially is this the case with regard to the power of appointment. In the city of Boston, the mayor with one of the branches of the council, appoints some of the executive officers of the city; others are elected by a concurrent vote of the two branches of the council; and some of the administrative boards, such as the overseers of the poor and school committees, are elected by the people. But the charter also provides that "that all boards and officers acting under the authority of said corporation [*i. e.* the city], and entrusted with the expenditure of public money, shall be accountable therefore to the city council." This does not, however, secure as high a degree of accountability as a system which makes all executive officers responsible to one person. In the city of New Orleans, the elective principle is applied to

nearly all the administrative offices of the city. The mayor, treasurer, comptroller, commissioner of public works, and commissioners of police and public buildings, are all elected by the people; and the surveyor of the city, and city attorney are elected by the council. And, notwithstanding this system, in which the mayor is to all appearances freed from any responsibility respecting the other administrative officers, the charter provides that it "is his duty to report to the council all officers and persons employed by the city, who fail to perform their duty, or commit any act for which they should be impeached or removed from office." But, unless it was also provided that he may suspend such officers, the mayor would be almost powerless to correct abuses in the city departments, save by the uncertain process of impeachment.

It is a common belief that to vest all appointments in the executive, with or without the consent of the Senate, tends to centralization; and that is undoubtedly the effect when the power is given absolutely to the executive. For, however open to abuses, the need of obtaining the consent of the Senate does act as a check on the appointing power, and this check is often well employed. But, by actual experience, it has been shown, that a system of election tends more strongly to centralize power, and at the same time to disturb that harmony that should exist in the administration of affairs. Thus in one of the con-

stitutions of South Carolina, all appointments were to be effected by ballot or by joint vote of the Legislature, without any co-operation of the governor. "It produced," says Dr. Lieber, "a stringent centralization without a sharply felt responsibility—a state of things by no means inviting imitation."[1]

That all executive officers should be held responsible for their conduct is a truism that scarcely requires to be mentioned. But how they may be made accountable is a difficult problem. It would appear that the appointing agent should also possess the power of removal. Yet even in the Federal government the power of removal is restricted by the tenure of office act, under which the president can only suspend an officer until a successor is appointed. All the chief executive officers in the State may be impeached,[2] but judgment in such cases does not extend further than to removal from office and disqualification to hold any office of trust or profit under the State. Nor does such judgment shield the impeached official from indictment and punishment according to law. But the process of impeachment is a tedious and uncertain method of holding officials to account, and it would be a better plan to give the power of removal or

[1] Reflections on the changes which may seem necessary in the present constitution of the State of New York, 1867.

[2] "Public officers shall not be impeached; but incompetency, corruption, malfeasance, or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law."—Constitution of Oregon.

even suspension to the chief executive. The constitution of Pennsylvania (1873) contains the following salutary provision: "All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office, or of any infamous crime. Appointed officers, other than judges of the courts of record and the superintendent of public instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except the governor, lieutenant governor, members of the general assembly, and judges of the courts of record learned in the law, shall be removed by the governor for reasonable cause, after due notice and full hearing, on the address of two thirds of the Senate"[1] (Art. vi, § 4).

Nor is the power of calling officials to account confined to the executive or legislature. By the charter of the City of St. Louis (1867), "every officer of the corporation, excepting the mayor and police justices * * * shall before entering upon the discharge of the duties of his office give a bond to

[1] In Alabama, the governor, secretary of state, auditor, treasurer, attorney-general, superintendent of education, and judges of the supreme court, may be removed from office for certain causes, by the Senate sitting as a court of impeachment. The sheriffs, clerks of the circuit, city, or criminal courts, tax-collectors, tax assessors, county treasurers, coroners, justices of the peace, notaries public, constables, and all other county officers, mayors, and intendents of incorporated cities and towns in the State, may be removed from office for certain causes, by the circuit, city, or criminal court of the county in which such officers hold their office. But in all cases trial by jury and the right of appeal are allowed.

the city * * * for the faithful discharge of his duty. * * * For any breach of the condition of said bond, suit may be instituted thereon by the city, or *by any person* claiming to have been injured * * * by such breach * * * for his own benefit" (§ 20).

There can be no question that one of the most prolific sources of official corruption and incompetency lies in the multiplication of elective offices, and herein consists one of the great distinctions between national and State offices. The democratic doctrine is that all officers should be chosen by the people, and as is often added, should hold office for short terms. But the people may fill offices indirectly by vesting the appointment in some elected officer, and no violence is done thereby to the democratic doctrine. In fact, when closely examined, the application of a system of elective offices, is of very limited scope, and especially with regard to executive or administrative offices. And yet the more do the purely administrative functions enter into the government, as in the State and municipal governments, as compared with the Federal government, the more general is the elective principle applied. Mr. Mill, in his work on "Representative Government," recognizes the true principle that should govern the filling of executive offices. "A most important principle of good government in a popular constitution is that no executive functionaries should be appointed by

popular elections, neither by the votes of the people themselves nor by those of their representatives. The entire business of government is skilled employment[1]; the qualifications for the discharge of it are of that special and professional kind which cannot be properly judged of except by persons who have themselves some share of those qualifications, or some practical experience of them. * * * All subordinate public officers who are not appointed by some mode of public competition should be selected on the direct responsibility of the minister

[1] This sentence of Mr. Mill contains an important truth, which militates against the idea of limiting the terms of offices of this class of officials. There is in every department of government a large number of rules or customs which can be learned only by experience; and as it is in the inferior grades of officers that this experience is found to exist, they may thus render essential service to their superiors, who may be ignorant of the practical details of the department. These inferior officers are in a measure "skilled laborers," and if subject to frequent change would introduce confusion and inefficiency in the transaction of business. This idea has been very well expressed by Sir Geo. C. Lewis, when speaking of the English service. "The permanent officers of a department are the depositories of its official traditions. They are generally referred to by the political head of the office for information on questions of official practice, and knowledge of this sort acquired in one department would be useless in another. If, for example, the chief clerk of the Criminal Department of the Home Office were to be transferred to the Foreign Office, or to the Admiralty, the special experience which he has acquired at the Home Office, and which is in daily requisition for the guidance of the Home Secretary, would be utterly valueless to the Foreign Secretary, or to the First Lord of the Admiralty. * * * Where a general superintendence is required, and assistance can be obtained from subordinates, and where the chief qualifications are judgment, sagacity, and enlightened political opinions, such a change of offices is possible; but as you descend lower in the official scale the specialty of function increases. The duties must be performed in person, with little or no assistance, and there is consequently a necessity for special knowledge and experience. Hence the same person may be successively at the head of the Home Office, the Foreign Office, the Colonial Office, and the Admiralty; he may be successively President of the Board of Trade, and the Chancellor of the Exchequer; but to transfer an experienced clerk from one office to another would be like transferring a skillful naval officer to the army, or appointing a military engineer to command a ship of war."

under whom they serve. * * * The functionary who appoints should be the sole person empowered to remove any subordinate officer who is liable to removal, which the far greater number ought not to be, except for personal misconduct."

As illustrating the blind attempts that have been made to secure an honest and efficient government, it will be interesting to note some of experiments that were made in New York, for a great part of the resulting misgovernment was due to the loose responsibility caused by the manner of filling city offices. Measures were early taken to distribute the powers or government which had been abused while centralized in a few hands. The city was made subject to the control of two governments, that of the county and that of the city,[1] and the board of supervisors was entirely irresponsible to the mayor. Moreover it was provided that the board should be non-partisan, that is, composed in nearly equal numbers of men of both political parties, an arrangement which severed them from any party control. Many of the most important functions of the city government were entrusted to non-

[1] As the city and county of New York are the same in extent, for many years a double system of government existed, thus giving to the same territory and population two distinct legislative bodies, independent of one another, and constantly liable to clash in interest and action. As the common council is composed of two distinct boards, aldermen and councilmen (although there is little opportunity for securing that difference in constitution and organization, which recommends such a division in the national and State legislatures), the duties of the board of supervisors were conferred upon the board of aldermen, and thus one unnecessary deliberative body abolished.

partisan commissions or boards, appointed by the governor or Legislature, and thus perfectly independent of the control of the mayor. The actual situation was thus succinctly stated in the State constitutional convention of 1867. "The interference of the Legislature has, at length, reduced the city government to a condition of political chaos. The mayor has been deprived of all controlling power. The board of aldermen, seventeen in number, the board of twenty-four councilmen, the twelve supervisors, the twenty-one members of the board of education, are so many independent legislative bodies, elected by the people. The police are governed by four commissioners, appointed by the governor for eight years. The charitable and reformatory institutions are in charge of four commissioners whom the city comptroller appoints for five years. The commissioners of the Central Park, eight in number, are appointed by the governor for five years. Four commissioners, appointed by the governor for eight years, manage the fire department. There are also five commissioners of pilots, two appointed by the board of underwriters, and three by the chamber of commerce. The finances of the city are in charge of the comptroller, whom the people elect for four years. The street department has at its head one commissioner, who is appointed by the mayor for four years. Three commissioners, appointed by the mayor, manage the Croton aque-

duct department. The law officer of the city, called the corporation counsel, is elected by the people for three years Six commissioners appointed by the governor for six years, attend to the emigration from foreign countries. To these there has recently been added a board of health, appointed by the governor." This system erred in two ways: it took the appointing power from the mayor; and it deprived the residents of the city of any voice in the management of local affairs, because all their officers were appointed at Albany.

The misgovernment that resulted from this piece of patch-work was even worse than that which had prevailed under the previous system, and as a further remedy, the charter of 1870, vested the appointment of the commissioners of the various departments in the mayor. But a great error was here committed, for the terms of office of these commissioners were made different from that of the mayor. Thus, four police commissioners were appointed for eight years; five commissioners of charities and correction for five years; one commissioner of public works for five years; five fire commissioners for five years; four commissioners of health for five years; five commissioners of parks, for five years; one of buildings, for five years, and five of docks to hold for five years. The comptroller and corporation counsel were elected and held office for five years. The result of this was that as the mayor's term of office

was but two years, he could be impeached and removed, but these officials retained their office unless they also could be impeached, which under the existing circumstances (the city being then in the power of the Tweed ring) was a very difficult if not impossible thing to do. While the people could elect a mayor, the other officials could not be removed by the new mayor by impeachment, and no real change in the city government could result.

Nor even at the present day, after many changes in the city charter, does there exist that complete control over executive functions which properly belongs to the mayor. In his last message (1882), the mayor said: "It is proper that these matters should receive the most careful consideration at both your hands and mine, notwithstanding the fact that while the mayor and common council are held responsible by the people for the state of our municipal affairs, we are virtually powerless under the present anomalous system, all administrative functions of real moment being exercised either directly by the heads of the executive departments, who are practically beyond control, or indirectly by the Legislature of the State, through special legislation."

To sum up then, we may quote Dr. Lieber's words: "The former almost universal mode of appointing by the Executive, with the consent of the Senate, seems to be far the best; certainly no better one has yet been discovered."

There is also a marked distinction between the national and State system of appointing judges. By the Constitution of the United States, the judges of the Federal courts are to be appointed by the president, with the advice and consent of the Senate; they are to hold their offices during good behavior; and are, at stated times, to receive for their services a compensation which shall not be diminished during their continuance in office (Art. 3, § 1).

The object of these provisions is to secure the independence of the judiciary. "In monarchical governments, the independence of the judiciary is essential to guard the rights of the subject from the injustice of the crown; but in republics it is equally salutary, in protecting the Constitution and laws from encroachments and the tyranny of faction. Laws, however wholesome or necessary, are frequently the object of temporary aversion, and sometimes of popular resistance. It is requisite that the court of justice should be able, at all times, to present a determined countenance against all licentious acts; and to deal impartially and truly, according to law, between suitors of every description, whether the cause, the question, or the party be popular or unpopular. To give them the courage and the firmness to do it, the judges ought to be confident of the security of their salaries and station."[1] Nor is this independence less necessary when the relations of the Leg-

[1] Kent's "Commentaries," vol. 1, p. 294.

islature to the judiciary are considered, for if the salaries of the judges could be altered and modified at pleasure by the Legislature, all check upon unconstitutional legislation which the judiciary now exercises would be done away with. It would appear then as if the Federal judiciary was based upon the best system that could be devised.

But the framers of State Constitutions thought otherwise, although it is only within a comparatively few years that the judges have been made elective in a number of States. Thus in 1830, in one half of the States judges were appointed by the governor; and in the other States they were elected by the Legislatures in joint assembly, or they were nominated by the governor and confirmed by the Legislature. In 1878, in twenty-four States, the the judiciaries were elected by popular vote, in nine they were appointed by the governor, and in five they were elected by joint assembly.[1]

It requires little comprehension to see that this method of electing judges destroys the independence

[1] "The short terms of office which characterize those States with a Legislative choice have been succeeded under popular elections by long terms. Under popular elections the term of the judges of the highest court in California and Missouri is ten years; in West Virginia, twelve years; in New York, fourteen years, and in Pennsylvania, twenty-one years, incumbents not being re-eligible in the last case. In fact, the average term of popularly elected judges is not much less than ten years, with such classification as to secure the State against change of its whole bench at once. The States intrusting judicial appointments to the governor, secure to the incumbent possession during good behavior, sometimes with a limit of superannuation. In those where the Legislatures elect, terms vary greatly; from two years in Vermont to twelve in Virginia. The Vermont practice has been to elect judges every session—even annually when the sessions were annual."—Warren in *International Review*, Sept., 1878.

of the judiciary, which should be one of its most marked characteristics. For it makes a seat on the bench a reward of adhesion to a political party and makes the retention of it dependent on subservience to the party. "Popular election proceeds on the principle that the people are the source of all power; which is true, in the last resort, and the persons elected are the agents of the people. But it is less true of judges by far that they are agents of the people than of any executive officer. There is nothing falling within the sphere of judicial action concerning which the judge can properly inquire what the people think or prefer. The same is in a degree true of the executive, but not to an equal extent of the legislative department. The existing law—from whatever source it comes—and the facts of the case the people have nothing to do with, as far as these bear on the trial; the law can be altered for future cases, the verdict can be set aside perhaps by executive pardon, but the judge knows only existing law with its principles and the irreversible facts. Now election by the people tends to make a man feel that he is the servant of the people who live at the present time, not of the law nor of the Constitution, which is the voice of the people for all time. How can this fail to injure his firmness and his righteousness, especially in cases where a political criminal has the people strongly for him or against him? Even moral lessons the judge may

not go aside from his strict duty to teach, how much less can he use his power as the people would have him, against the claims of justice? But he will be apt to do this if he depends on the people for his power." [1]

There is another class of office-holders of all grades and degrees in the various departments of the government, both State and national, who have no voice in the administration, but as chiefs of bureaus and clerks, are necessary for the transaction of business. In the Federal administration alone there are nearly ninety thousand such office-holders, and as new territory is opened up, the number is constantly increasing. That there should be any question on the manner of filling these places is a matter for wonder, for it would naturally be supposed that the only qualifications required would be fitness for the position, and administrative capacity. But instead of these, such appointments have been made on the basis of recommendations, influence, and official favor, a system that has introduced grave abuses in the civil service, as this department of the administration is called.

These evils are supposed to have been begun by the passage of an act in 1820 to limit the term of office of certain officers. "From and after the passing of this act, all district attorneys, collectors of the cus-

[1] Woolsey's "Political Science," vol. 2, p. 342. This subject of an elective judiciary is very fully and ably treated by Mr. Dorman B. Eaton, in his pamphlet "Should Judges be Elected?" (1873).

toms, naval officers and surveyors of the customs, navy agents, receivers of public moneys for lands, registers of the land offices, paymasters in the army, the apothecary-general, the assistant apothecary-general, and the commissary general of purchases, to be appointed under the laws of the United States, shall be appointed for the term of four years, but shall be removable from office at pleasure." This law practically placed these offices at the disposal of each new president or appointing officer, and the opportunity was soon used for rewarding personal friends or politicians for their political services without any regard to the fitness of the appointments. Thus, during the eight years of General Washington's administration there were only nine removals, and all for cause. Mr. Adams made nine removals also, but it is believed that none were because of a difference of political opinion. Mr. Jefferson removed only thirty-nine office-holders; Mr. Madison, during eight years, made five removals; Mr. Monroe, during eight years, made nine; and Mr. John Quincy Adams, during four years, made but two. On the accession of Mr. Jackson to the presidency in 1829, the whole system was changed, and the power of removal was freely employed. "Jackson, following a president who had almost created a hostile party, and being opposed by so many open and concealed enemies, decided to fill every vacancy with a partisan of the administration, and further, to create va-

cancies, whenever it should seem of party advantage, by exercising the almost unused privilege of removal from office. This made necessary, during the summer of 1829, the application of the comparatively novel theory of 'rotation in office,'[1] by which nearly 500 postmasters were removed during Jackson's first year of office. The practice, thus begun, has since been followed by all parties in all elections, great and small, national and local."[2]

A further abuse arose in the assumption of local patronage by senators and representatives. In the early days of the republic, when means of communication were slow and uncertain, the president very naturally consulted the State's representatives respecting candidates for Federal offices in their States, for in no other way could he secure this knowledge. In time, however, the representatives regarded the power of advising the president in these particulars as a right, and even more began to dictate appointments as if the Federal patronage in their State or district was their private property, to be used as seemed to them best. The result was that offices were used to build up political influence, and were bestowed for party services; so that he who could manage a primary election or gain political advantage possessed stronger recommendation for office than he who was by capacity better fitted for the performance of its duties.

[1] "To the victor belong the spoils," is the vulgar rendering of the phrase.
[2] Johnston's "History of American Politics," p. 105.

As early as 1838 a movement was made to separate office from politics. Mr. Calhoun described the proposed measure as a bill "to inflict the penalty of dismission on a large class of the officers of this government, who shall electioneer, or attempt to control or influence the election of public functionaries, either of the general or State governments, without distinguishing between their official and individual character as citizens."[1] And later attempts have been made to prevent government officials from employing their official positions, either by intimidating their subordinates or by distributing patronage to those whom they wish to conciliate, to per-

[1] See his speech of February 22, 1839. Von Holst, speaking of Calhoun's remedy, viz.: to place the office-holders beyond the reach of the executive power, justly says: "If he had changed but one word,—if he had said *party in power* instead of *executive power*,—this advice would, indeed, have been the egg of Columbus." Of another evil which has grown out of the relation between offices and party, viz.: political assessments, that is, such as are made on office-holders of all grades by a perfectly irresponsible committee, to be expended in furthering the objects of the party, we need only make mention. Although, nominally, such contributions to the campaign fund are made "voluntarily" by the office-holders, yet their true nature is shown by many circumstances. Thus, in making its application the committee fixes the amount which each man is to pay. In 1882 two per cent. of the annual salary was required, and was levied on all, from the chiefs of bureaus to the lowest laborer in the government navy-yards, and also levied alike on Republicans and Democrats. Moreover, in case the call was not responded to, employés of the committee went among the departments and made personal application to each delinquent. By experience the clerk knows that he must pay or be discharged, a fact which still more strongly brings out the "voluntary" nature of the contribution. Thus, the final sentence of a circular which emanated from such a committee reads: "At the close of the campaign we shall place a list of those who have not paid in the hands of the department you are in." The committee may expend the fund thus collected as it sees fit, and need render an account of such expenditure to no man. Truth compels us to say that it forms a "corruption fund" for influencing elections, and the manner of expending it is as vicious and debauching to the public service as is the manner of collecting it. This matter has also been made the subject of legislation, but without any remedy being afforded.

petuate their own party in power. But the evil cannot be cured by such legislation, and a much more radical reform must be adopted before it can be remedied.

To such an extent was the abuse of patronage carried, that in 1853 and 1855, acts were passed by Congress, requiring examinations for admission into the public service in departments at Washington; but owing to defects in the law, and the strong determination of those who possessed the patronage to ignore its provisions, it was never effectively put into operation.[1] And it was not until 1871 that any decided step was taken to reform the civil service. In that year the president was authorized to "prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability, for the branch of service into which he seeks to enter";[2] and this resulted in the appointment of a civil service commission. This commission framed a system of competitive examinations, open to all alike and uniform in the departments; but owing to the want of the

[1] "Sec. 163. The clerks in the departments shall be arranged into four classes, distinguished as the first, second, third, and fourth classes.

"Sec. 164. No clerk shall be appointed in any department in either of the four classes above designated until he has been examined and found qualified by a board of three examiners, to consist of the chief of the bureau or office into which such clerk is to be appointed, and two other clerks to be selected by the head of the department."—"Revised Statutes."

[2] Act of March 3, 1871.

support of Congress, the commission was obliged to limit its operations, and the old system of appointing was practically continued. In 1875 a new system was introduced for making appointments in the treasury department, by which offices were apportioned among the States in proportion to their respective populations[1]—a measure which did not in the least remedy the evils existing under the old system.

On the accession of Mr. Hayes to the presidency a renewed attempt to reform the service was made, and it had at the first the support of the president. But, so far as a general system of reform, applied to all departments of the government, but little progress has been made. Individual officers have put into force such rules and regulations as seemed to them best suited to secure efficient office-holders in their own department (by Mr. Schurz in the interior department, Mr. James in the post-office of the City of New York, and Mr. Burt in the naval Office of New York), and the commission[2] has done good service in its reports and in the work it has

[1] "That the duties heretofore prescribed by law and performed by the chief clerks in the several bureaus named shall hereafter devolve upon and be performed by the several deputy comptrollers, deputy auditors, deputy register, and deputy commissioner herein named: *Provided*, That on and after January 1, 1876, the appointments of this Department shall be so arranged as to be equally distributed between the several States of the United States, Territories, and the District of Columbia according to population." Approved March 3, 1875.—"Statutes at Large," volume 18, pages 398 and 399.

[2] The chairman of this commission, Mr. Dorman B. Eaton, deserves special mention for his endeavors to effect a true reform; and his writings on this subject contain the best and most complete study of it.

actually performed in the New York Custom House and elsewhere. And wherever a system of competitive examinations has been introduced under proper restrictions, the best of results have followed. Politics have been eliminated, influence and recommendation are of no weight, and the office becomes what it should be, for the transaction of business, and not to give aid to party. There is no valid reason, theoretical or practical, why these methods of appointing should not be universally employed.

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